

No. 16,981
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES
VS
ALBERT M. MORRISON, et als.

VOLUME 3.

NO. 16,981
U.S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

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U.S. DEPARTMENT OF JUSTICE

UNITED STATES

*

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VS

* UNITED STATES DISTRICT COURT

ALBERT M. MORRISON, et al. * EASTERN DISTRICT OF LOUISIANA

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Proceedings had in open Court in the above entitled and numbered cause before HON. C. B. KENNAMER, Judge, on 1st, 2nd, 3rd, 4th, 5th and 6th of May 1923, at New Orleans, Louisiana.

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APPEARANCES:

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MR. SLADE: Exception.

Q. Are you familiar with the laws of the State of Louisiana with relation to tapping or interfering with telephone wires or apparatus of the Telephone Company in the city of New Orleans and State of Louisiana?

OBJECTION: MR. WOODCOCK: I object.

THE COURT: I sustain the objection.

MR. SLADE: Exception.

BY MR. SLADE:

Q. You did not know whether the wire you tapped was a dial system or other system?

A. I had to know; I did know.

Q. After you tapped the wire, would you get a signal by testing the bell signal if it rang in the house?

A. I do not understand the question.

Q. Well, if the bell of that telephone rang in the house where it was located by your wire tapping, would you detect that signal, or get the signal at the other end where you were listening in?

A. You cannot hear the bell ring, but hear the electric sound that would cause that bell to ring.

Q. You would not know what that was?

A. If you had a receiving set on, you would know unquestionably that the bell was ringing.

Q. Now you are guessing. You would not hear it at the other

end, the bell; can't you answer that yes or no?

OBJECTION: MR. WOODCOCK: I object.

A I can't answer that yes or no. We were too far away from the premises to hear the actual bell ring.

Q So you would not hear the bell?

BY THE COURT:

Q If the bell did ring, and you were listening in at the place where you had your ear phones up, would there be anything happen that you know of?

A A very strong and clear indication that the bell was ringing unmistakably.

MR. SLADE: Pardon me a minute -

THE COURT: No, I will not indulge Counsel.

REDIRECT EXAMINATION:

BY MR. WOODCOCK:

Q I ask you in view of the cross examination, if you ever went on the premises at 3327 Canal Street in connection with this telephone installed there?

OBJECTION: MR. SLADE: That has been gone over.

THE COURT:

I think he testified to that yesterday and observed the number of the license. He has been over that.

BY MR. WOODCOCK:

Q Will you state again what is your best recollection of the date when these listening outfits were installed?

A Yes. If I said February 18th when I first mentioned it, I actually meant March 12th the date I put it on. I had a number of installations and February 18th was one of them, but March 12th I believe is the date I put this particular wire on.

Q The first listening set, or the second one?

A The first one, Sir.

Q Then a week or so later you moved down the street further?

A Yes sir.

Q From February 18th on to March you made other wire tapings; you mean to say you probably confused the one on February 18th with March 12th?

A Yes. On February 18th, March 12th, 24th.

BY A JURYMAN:

Q Yesterday you testified that there was a place on the pole which I did not hear what you called it, a lug or something, that you tapped several telephones in on that same wire?

A That is right.

Q Where is that pole, the first pole you went on?

A The first pole has a small terminal that will accomodate about 10 or 16 lines.

Q That is where those wires run from, those two lugs?

A That is right.

Q That is where you could tap on?

A I could, but I went in on the big wire.

Q That pole that you tapped, that would only be about 50 feet from the house?

A I think it was more than that.

Q I mean on Jefferson Davis Parkway?

A I think a little more, about 100 feet or so.

Q What is the number? A 3327 Canal St.

Q That is near Jefferson Davis Parkway, about four houses from the corner?

A Yes sir, about four houses from the corner.

Q And the pole is back of the house on Jefferson Davis Parkway? A Yes, across the sidewalk.

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ALBERT M. NABERS: Witness, being duly sworn and examined on behalf of government, testified as follows:

DIRECT EXAMINATION:

BY MR. WOODCOCK:

Q Please state your name? A Albert M. Nabers.

Q Mr. Nabers, you are one of the Special Agents of the Bureau of Prohibition? A Yes sir.

Q How long have you been in that position?

A About five years.

Q And have you made any specialty during your term of service?

A For the last 2-1/2 or 3 years I have been ^{doing} tapping wire work.

Q What study have you made of telephone installations and telephone transmissions?

A Well, I had four years at the Georgia School of Technology in electrical engineering and other instructions given by the Bureau on the subject.

Q The Georgia School of Technology was before you became a Special Agent? A Yes sir.

Q You are familiar with the method of the transmission of sound waves by electric wire? A Yes sir.

Q And the telephone device and instruments? A Yes sir.

Q Did you have anything to do with the installation of a listening in set over the telephone Galvez 6959?

A Yes sir.

Q Whom did you assist in that work?

A Special Agent Murray.

Q Did you go on the premises at any time in order to make that listening in set? A No sir.

THE COURT:

Col. Woodcock, the Court rules that testimony is admissible without further proof on it.

BY MR. WOODCOCK:

Q Do you know where the listening in set was?

A Yes sir.

Q Did you listen in at any telephone conversations?

A Yes sir.

Q And you kept a record of them?

A Yes sir.

Q In your own longhand?

A Yes sir.

Q I ask you to look at page 70 and state whether that is the record of a telephone conversation overheard emanating and proceeding to Galvez 6959?

A It is, Sir.

Q Did you recognize the voices that you heard?

A Yes sir.

Q How did you make that recognition?

A Over a period of time I had listened over this telephone, and at the time these men were apprehended on April 11th I talked to them.

Q And you talked to the men whose names are listed there?

A Yes sir.

Q You testified before the preliminary hearing, did you?

A Yes sir.

Q And did you state then that you did recognize the voices?

OBJECTION: MR. SLADE: I object.

THE COURT: Sustain the objection.

BY MR. WOODCOCK:

Q Can you state now the names you have jotted down there are the voices of the men you saw at that preliminary hearing and talked to? A Yes sir.

BY THE COURT:

Q Did you hear them talk over the telephone few or many times?

A Many times.

Q And you became familiar with their voices and the names given in the telephone conversations?

A Yes sir.

BY MR. WOODCOCK:

Q Refreshing your recollection from that memorandum, what is the date of that conversation I point out? (Indicating)

A March 15, 1931.

Q At what time?

12:17 afternoon.

Q Again refreshing your recollection will you say what you heard over the telephone at that time?

OBJECTION: MR. SLADE:

Object to all testimony of that character and see if we can save time.

THE COURT: You want to except to all of it?

MR. SLADE: Yes.

THE COURT: You can have an objection.

OBJECTION: MR. SLADE:

Defendants now object to all the testimony of this witness which he may give from now until the termination of his direct examination, as to any conversations he claims he intercepted or overheard on the tapped wire in question testified to by the witness Murray, I believe, between the defendant Morrison or any of the other defend-

ants, with others, whether on the incoming or outgoing call on the wire in question, on the ground tapping of the wire is a wrongful and criminal trespass on the subscriber, the wrongful use of that property and wire, as well as the Telephone Company and the subscriber's exclusive right to the use, control, and enjoyment of such telephone connection and equipment; and on the further ground, that in tapping such wire as testified to by this witness and the witness Murray, and the interception or overhearing of the conversations coming in over said wire is, and constitutes a direct violation of the subscriber's rights secured to him by the 4th and 5th amendments of the Constitution of the United States; and on the further ground that such testimony is incompetent and inadmissible on behalf of the government since it comes into Court offering such testimony with unclean hands, having by unlawful methods secured alleged information which it now seeks in this Court to make proof of in its effort to secure a conviction wrongful of the alleged crime charged in this Indictment.

THE COURT: Overruled.

MR. SLADE: Exception.

THE COURT:

Gentlemen, as to the admissibility of the testimony, that is not a question with you. That is a question entirely

with the Court whether the testimony is admitted in your hearing. It is not a question for you to determine whether the proper method was used or improper method used. That is a matter that addresses itself to the Court.

MR. WOODCOCK:

I would like to make a statement in regard to the use of the words: "unclean hands" -

THE COURT:

That is argumentative. Gentlemen, disregard all such expressions as that. I instruct you the admissibility of the evidence is entirely with the Court.

MR. SLADE:

I do not know whether the stenographer took down my observation and exception.

OBJECTION: MR. HOLLINS:

I make my objection to this witness' testimony. I want to reserve my rights. I do not know if it affects my client.

MR. GRACE:

The objection and exception applies to all defendants?

THE COURT:

Oh yes, as to all of the defendants named in the conspiracy.

BY MR. WOODCOCK:

Q Whose was the incoming voice? A Nate Goldberg.

BY MR. SLADE:

Q. What date was that?

A. March 15, 1931.

BY MR. WOODCOCK:

Q. And who was the answering voice?

A. Let me get this straight. It was an outgoing call.

Q. Well, who was on 5970 telephone? A. 6959.

Q. I will have to write that down and keep it before me.

Who was at the telephone 6959?

A. Bert Morrison.

Q. And to whom was he talking? A. Nate Goldberg.

Q. That is what I mean, the man on the other end of the telephone? A. Yes sir.

Q. Repeat what Bert said?

MR. GRACE:

I would like to qualify him on the question of identification of voices before he is allowed to testify.

THE COURT: He testified to that fact.

MR. GRACE:

He said he identified them at the preliminary hearing.

The jury hasn't the benefit of what he testified to at the preliminary hearing. We think we have the right to cross examine him on it.

THE COURT:

I will permit you to do that when you take him on cross examination.

A. Out 12:17 in the afternoon. Outside a man says: "Hello."

In, Bert Morrison: "Let me talk to Nate?" Out, Nate Goldberg says: "Hello." Bert: "How are they running?" Nate: "Hot and cold." Bert: "Is everything all right?" Nate: "Yes okay." Bert; "Are they going out again to-night?" Nate: "Yes, I think so." Bert: "Merchant called and wanted to know where that fellow was. Say, hasn't that damn Joe gone crazy over the horses. Are you in on that?" Nate: "No. I don't want any part of that. I take mine the other way." Bert; "I want to see you about something." Nate: "I could see you late today or tomorrow. I want to get some sleep now." Bert: "Well, give me a ring when you get to be yourself." Nate; "All right, I will."

OBJECTION: MR. SLADE:

I ask that be stricken out as irrelevant and immaterial.
It doesn't connect anything.

THE COURT:

That part of the conversation the witness testified to between Bert Morrison and the defendant Goldberg will be restricted to them.

BY MR. WOODCOCK:

Q Now then, I ask you to refer to your record of conversation of March 15, 1931 at 1:10 P. M.?

A (Witness does as requested)

BY MR. SLADE:

Is that the same one, March 15th?

A It is a different time.

BY MR. WOODCOCK:

Q At 1:10 P. M. Who was this between?

A Bert Morrison and a man called Joe. I don't know who he is.

Q You do not know who Joe is? A No sir.

MR. WOODCOCK:

I think it is admissible as to Bert Morrison.

THE COURT: Oh Yes.

MR. SLADE:

No identification of the person. He was talking to himself so far as this record is concerned. He cannot identify Joe.

MR. WOODCOCK:

The Indictment is conspiracy between Bert Morrison and various other persons to the Grand Jury unknown. This is a conversation pertaining to the object of the conspiracy.

THE COURT: Overruled.

MR. SLADE: Exception.

A In: Bert Morrison: "Hello." Out. Man says: "This is Joe, Bert. Harry told me you wanted me." Bert: "I thought you might want to get that boy and take a run out this afternoon and see if you can pick up the Barbara. She has several schedules, you know. If you could I will give them to you also a copy of the Barbara's code." Joe:

"I'm glad you thought of that, Bert: Bert do it. I'll be up to your place shortly to pick up that stuff, and I'll take the boy with me to see what we can do." Bert: "Okay."

Q Now will you turn to 76?

A (Witness does as requested) Incoming call at 4:37 afternoon, March 15, Bert Morrison says: "Hello" Out. Man says: "Joe, Bert. I've got a 27 word message here. You want me to give it to you over the telephone?" Bert: Yes, wait a minute." Bert: "Go ahead", and Joe says: "This is spelled out, code, Cesse cora, drift, tidar, head; this is a funny message. It has got 4 and some 6 letter words." Bert: "That's all right. Go ahead. Give me the next." Joe: "All right. Blood, adder, press, dawse, misscb, demur, culot, annex, twirl, modus, culot, olive, barba, lost, tithe, newel, abfy. That's all. Will you give me the decoding right away? I think it has something to do with the Barbara. Moran just got a plain message which says there is some trouble down there. One of the boats leaking badly. If you'll give me the answer I'll try and stop one of the boys down there." Bert: "Okay, Joe, I'll call you right back."

THE COURT:

Have you got that message decoded by the messages here the other day?

MR. WOODCOCK:

No, Your Honor. We decoded the messages that were picked up, and that was not picked up.

THE COURT:

I thought if you had it decoded it would be more intelligent to the jury.

OBJECTION: MR. GRACE:

We think we are entitled to an objection, because the jury does not know what all this is. We do not know what it is, and is taking up the time of the Court.

THE COURT: I overrule your objection.

MR. GRACE: Exception.

BY MR. WOODCOCK:

Q Will you turn to 78, please?

A (Witness does as requested) In, 5:03 P. M. March 15th.

Bert says: "Hello." Out a man says: "How many words you got there, Bert?" Bert: "Twenty-two", Joe: "Wait a minute. I left out a line. I noticed it after I got back upstairs. Start right after that first culot and put in this. Slope, snipe, braze, sense, ulcer. Then the next word is annex, and so on. Does that make 27?" Bert: "Yes." Joe: "Hurry, will you, and let me know." Bert: "Right away."

Q Will you take 79?

A (Witness does as requested) Out 5:05 afternoon, March 15, 1931. Out man says: "Hello". In, Bert says: "Joe,

the message was the Barbara has lost her propeller and is returning home." Joe: "Well, he is going to pay for that much. The boat ought not to stand that." Bert: "He would pay for it if the Rosita lost her propeller."

Joe: "I know, but she is not chartered by the month. She don't get paid until she delivers her load. Its nothing for us to fight about. I'm just asking." Bert: "Well, the rest of the message was in answer to a question I asked yesterday." Joe says: "Well, I knew there was some trouble. I heard the boats talking to one another. The call was GL and the boat answered DL. Who is that?" Bert says: "Wait despair #1 is GL, and the schooner Sparrow is DL." Joe: All right. I'll keep that for future reference." Bert: "Okay, Joe."

Q Turn to 82?

A (Witness does as requested) Out 5:34 in the afternoon March 15, 1931. Out, woman says: "Hello". Man says: "Let me speak to Nate." Nate says: "Hello. What you know." Man says: "The Barbara lost her propeller and had to go back." Nate says: "Well, I'll be damn. The boys just called me here raising merry hell. Is there any danger." Will I read this obscene language? (Indicating)

THE COURT:

If you come to any language that is obscene or filthy language, call the Court's attention to it.

A (Witness continuing) Man says: "No, I don't think so, but they would get back by morning." Nate: "Hell, I think I'll tell Andy." Man out: "I don't know whether he is there or not. You have to talk to Bert." Nate: "Come on over." Man says: "All right."

Q Now #84?

A Out 6:05 P. M. afternoon, March 15, 1931. Out, woman says "Hello." In, Bert says: "Can Charlie come to the phone?" Woman says: "Yes, just a minute." Man comes to the phone and says: "Hello." Bert says: "Have JD check two." Charlie says: "Wait just a minute." -

Q Did you recognize at any time the voice of the man called Charlie there?

A No sir.

Q All right?

A Charlie says: "Just a minute. All right." Bert: "Bergs, whole." Charlie says: "All right, Sir."

Q No. 101?

A In at 10:43, morning, March 18, 1931. In. Bert says: "Hello." Out, man says "This is Andres. I've got three. Do you want them over the phone?" Bert: "I say how long are they?" Man says: "One has 23 and another one an answer at four o'clock." Bert: "Call a messenger boy and send them to 3327 Canal St., apartment one." Andres says: "All right."

Q No. 105?

A In, 5:26 afternoon, March 18, 1931. In, Bert says: "Hello." Out, man says: "This is Joe, Bert. What do you know?" Bert: "I say I got a message from Bill and it only said the Barbara had returned and asked me what I had to propose. What have you to propose?" Joe says: "Well, I don't know how the hell I can propose anything unless I know how long she will be disabled. If it is going to be indefinite we will shift as much of her load to the Rosita as we can and then load the Barbara out when she is ready with more stuff. Of course, if she can be ready in a few days we will just let it rock along. Why didn't you wire and get something definite for me then I can arrive at some sort of conclusion what to do." Bert: "All right Joe, I'll see what I can do." Joe says: "Did Willie May bet on that horse -"

Q The rest doesn't seem to have anything to do with it; I don't press it. Turn to 126?

A (Witness does as requested) Incoming call at 12:35 afternoon of March 22, 1931. Bert says: "Hello." Man says: "Take this message, Mr. Bert." Bert: "I say just a minute. All right." Man says: "There is 14 from the Lassie. Rites, woody, brone, slang, aches, stage. Here's a funny one, adafi, wrath, agleg, baste, metal, bough, world, clunk. Have you got 14?" Bert says: "Yes". Man says: "I didn't get the other man as I was busy with

this one and when I came in he wasn't on. I'm to meet him again at 2." Bert says: "All right, I'll call you if I have anything."

Q Do you know the voice on the other end of that phone?

A No sir.

Q Turn to 128?

A (Witness does as requested) Out at 1:01 P. M. March 22, 1931. Man says: "Hello" - pardon me, this is some obscene language here -

Q Yes, that is clearly obscene. I don't want you to read that.

MR. GEX:

That is all right. Skip that.

A Bert says: "I told you that man would wake me up at eight this morning and he did. Wait, I'll give you that message. He says Barbara lost propeller shaft and propeller and will be laid up about four weeks. It also says that the Rose will be ready Thursday and the other one will be here Thursday. That's pretty good time."

Man says: "Yes, that is all right, Bert." Bert: "Now I talked to Joe and here is what I advised, take 1,000 off the Barbara and load it on the Rose Thursday. As to that other 4500 we could get a permit to come out again without unloading, but business not so good. I wish we had the CB there a little longer. They could put more

on her. Anyway you will have 2,000 here Thursday, and by making the change from the Barbara to the Rose you can save \$3500 to \$4,000." Man says: "Well I'll see you tomorrow and we can figure out something." Bert: "Well, Joe" -

Q That is something else. #132 is the next?

A In 4:37 afternoon March 22, 1931. In, Bert says: "Hello". The operator says: "Galveston is calling." Bert says: "Hello". Man says: "Hello, Bert. We can't find him, where is he?" Bert says: "Wait just a minute. Say, he is 35 degrees southeast of the Brazos River off Freeport." Man says: "We came here and he was away. We will try again tonight. Does he have the same code?" Bert says: "Yes, try to meet him at six, eight and ten tonight." Man says: "Tell him to send us some kind of message." Bert says: "All right, I will. I'll do it right now. Try again tonight and let me know."

Q Turn to 134; that is the same day?

A Yes, 5:35 P. M. Out, woman says: "Hello". Bert: Is Mr. Andres there?" Woman says: "Just a minute." Then Andres says: "Hello." Bert says: "Here's one for the Lassie, Charlie. Baton -"

MR. WOODCOCK:

If I may interrupt; this is the same message which was picked up by Mr. Kelly on his radio set, and we have it translated.

A (Witness continuing) - Baton, widow, refer, argus, bales, night, wedge, flash, slime, snack, slime, snack, fleck, small, sleep, slope, envoy, witch, ranch, equal. This is forming his position. You ask him if he is there. He may say no. If he does, get where he is now. I just heard from those people over there and they say they can hear you and hear all right, but she can't hear them. If you can suggest anything that will help them I wish you would." Man says: "Yes, I think I can tell them something that will help a lot." Bert says: "Tell him to send them something in their code. They have a private code over there, you understand." Man says: "Yes." Bert says: "I am going out to the show and won't be back until sort of late, so call me about 9:30 or 10:00." Man says: "I'm going out too as soon as I get this six o'clock trick," Bert says: "All right, Charlie."

MR. WOODCOCK:

That message is substantially identical. I think one word was misspelled ^{same} picked up the/date, March 22nd by Kelly, and translated by the lady.

THE COURT: I will permit you to read that.

MR. WOODCOCK:

Plain English "will come", and there is a word she did not get; "right position latitude 28.28 longitude 94.55. If not go there immediately."

CROSS EXAMINATION:

BY MR. GRACE:

Q Before you intercepted these messages, did you familiarize yourself with the voices of Bert and Nate?

A No sir.

Q You did not know either voice at all?

A No sir.

Q Had you ever heard them before?

A No sir.

Q Do you write shorthand?

A No sir.

Q These messages you read are not word for word, are they?

A No sir.

Q In what manner did you identify the voice of Nate?

A I talked to him in the office at the time he was arrested.

Q What date was that?

A April 11th.

Q Had you ever talked to him between March 15th and April 11th?

A No sir.

Q You took a number of messages between those dates?

A Quite a lot.

Q And you heard a number of different voices?

A Yes sir.

Q How did you identify the voice of Morrison?

A Well, of course, after you hear it a number of times, you recognize it again.

Q How did you recognize it?

A From my sense of hearing.

Q Over the phone? A Yes sir.

Q You did not know whose this voice was; you were not familiar with the voice before that?

A No sir, but several times when talking they gave the names.

Q How do you know that it was Morrison who gave the name of Bert?

A I didn't at that time. I haven't Morrison written in my notes. I have Bert.

Q In other words, the man giving the name of Bert you would not know whether it was Morrison?

A No sir.

Q Voices sound different over the telephone than face to face conversations? A Not necessarily.

Q Sometimes they do?

A I am able to recognize voices over the telephone.

Q Did you have any experience in tapping telephones before this occasion? A Yes sir.

Q Listening in? A Yes sir.

Q Had much experience?

A I helped to put on 10 or 15 and listened as far back as 1928.

Q On tapped wires, the voice is not as clear as on a wire not tapped. Is that correct?

A No sir, that is not correct.

Q You can tap a wire and receive just as clear a communication as one not tapped? A Yes sir.

Q You swear to that? A Yes sir.

Q What words did you hear Mr. Goldberg say on April 11th?

A I beg your pardon?

Q What words did you hear Mr. Goldberg say on April 11th?

A I do not recall. I did not make a record.

Q You do not know whether two or three words?

A Oh, I talked a few minutes.

Q Did you talk to him personally? A Yes sir.

Q You testified at the preliminary hearing?

A Yes sir.

Q Didn't you say you did not have any conversation with Mr. Goldberg on the 11th?

A I do not recall.

Q What words do you recall with Morrison on April 11th?

A I don't know that either.

Q You do not know whether a few words or a number of words? A No sir.

Q All these messages that you have were written out in longhand? A Yes sir.

BY MR. GEX:

Q Did you take them down in longhand?

A Yes sir.

Q Just like you have got them here?

A This is the way I took them down.

Q You wrote as fast as they could talk?

A Oh no, I didn't say that.

Q How did you do that?

A As quickly as I could after they talked, but I couldn't possibly keep up with them in long hand.

Q You remembered the conversation and put it down afterwards?

A Yes sir.

Q You do not undertake to say that is a verbatim report?

A No sir.

Q That is what you remember they said and you put it down?

A Yes sir.

BY MR. WOODCOCK:

Q It would be about substantially the subject of the conversation?

A Yes sir.

BY MR. GEX:

Q It is only the substance of the conversation?

A It is pretty nearly correct.

BY MR. WOODCOCK:

Q Those code words you got absolutely?

A They were spelled out by the persons talking.

Q And you took them down as they spelled them out?

A Yes sir.

Q And I did not ask you to give all the conversations you heard this man Bert give?

A Oh no, there are a great many more.

MR. WOODCOCK:

I just picked out what I thought important to this case.

W. H. MULLEN: Witness, being duly sworn and examined on behalf of the government, testified as follows:

DIRECT EXAMINATION:

BY MR. WOODCOCK:

Q Please state your name? A W. H. Mullen.

Q Are you one of the Special Agents of the Bureau of Prohibition? A Not at present.

Q You are out of the service now? A Yes sir.

Q Were you in the organization in the Winter of 1931?

A Yes sir.

Q Were you employed in New Orleans at that time?

A Yes sir.

Q Were you instructed to listen in at a telephone set on a certain telephone, Galvez-6959? A Yes sir.

Q And did you so listen in? A Yes sir.

Q In connection with other Special Agents? A Yes.

Q Who else was on that listening set?

A Mr. Richardson.

Q Anyone else? A Not while I was there.

Q It was pointed out to you as the set? A Yes sir.

Q Were you able to identify at that time, or subsequent, any voices that you heard over that set? A Yes.

Q And did you write down what you heard as you heard it?

A To the best of my memory, yes.

Q Are those the sheets that you actually wrote out?

(Counsel hands witness documents and witness examines same) A Yes sir.

Q Will you refer to your notes there, 164; is that your writing? A Yes sir.

Q You took that down? A Yes sir.

Q Well now, will you read that to the jury?

MR. SLADE: What date?

BY MR. WOODCOCK:

Q What is the date of that? A March 26, 1931.

Q At what hour? A 6:55 P.M.

Q Now read that very slowly so these gentlemen at the remote end of the table can hear?

A Out 6:55 P.M. Voice outside, "Hello." Inside: "Johnnie?" Outside: "Yes, Bert. Did you get that one this morning?" Inside: "Yes, take this one." Outside: "Just a minute. All right. Go ahead?" Inside. "Duroy, frock, aired, punch, cyrus, rosie, adage, cyrus, barba, afraid, gland, smack, smear, snook, brand, puppy, filth, paced, peace. That's all. Outside: "19 words?" Inside: "Yes." Outside: "Did you read the evening paper?" Inside: "I read one of them." Outside: "Looks like that fellow took a hell of a chance." Inside: "I know who it was. Nobody connected with us." Outside: "What do you think of the other stuff about Mack?" Inside: "Nothing to worry about. That don't

concern us." Outside: "I met McDonald at a party."

OBJECTION: MR. SLADE:

I think that is irrelevant.

BY MR. WOODCOCK:

Q Did you subsequently recognize the voice of the person whom you have written there as "Bert?"

A Yes, I did.

Q And whose was that voice?

A That was Mr. Morrison's voice.

Q And how did you come to identify or recognize it?

A I was in his residence.

Q You talked with him?

A Yes sir.

Q On what date?

A April 11th.

Q And the date of that conversation is, I believe you said -

A March 26th.

Q That is not the only time you heard that voice over the telephone, is it?

A No sir.

MR. SLADE:

May I ask a preliminary question at this time?

THE COURT:

Perhaps you had better wait and do it on cross examination.

MR. SLADE:

I will not be able to remember the pages.

MR. WOODCOCK:

I will give them to you.

THE COURT:

Ask one question and let us see what it is. You cannot carry on the examination in that way.

MR. SLADE:

Let me call Your Honor's attention to it first. (Counsel in conference with Court)

Q Mr. Witness, the paper you just read from, is that sheet in exactly the same form as it was the day you say you took it down?

A With the exception of these. (Indicating)

BY THE COURT:

Q Have you since attempted to decode that message, write the meaning of it there? A Not I.

Q Someone else? A Yes sir.

BY MR. SLADE:

Q Somebody else had possession of those documents?

A Yes sir.

Q And that was inserted without your knowledge? (Indicating) A Yes sir.

THE COURT:

What is the use of all that; the paper is not offered.

MR. SLADE:

He read from that, and I think the jury -

THE COURT:

Reading only the part he put down himself.

BY MR. WOODCOCK:

Q That is all you did read, the part you put down yourself?

A Yes sir.

Q And you did not read anything except what you did put down yourself? A Yes sir.

Q Do not read anything else, please. Turn to page-169?

A (Witness does as requested)

Q Is that yours? A No sir.

Q Turn to page 181, please?

A (Witness does as requested)

Q Is that a record of a conversation you heard over that telephone? A Yes sir.

Q Will you read that, please, this one of 1:26?

A March 27, 1931, 1:25 P.M. -

Q 1:26. I did not ask you about 1:25.

A 1:26 P.M. Inside: "Hello." Outside: "Say Willie, look at that little slip you put in the ledger and see how much Nate is indebted to me for."

Q Isn't that the voice of Bert saying that?

MR. SIADE:

There is no indication of that on there.

BY THE COURT:

Q Do you have any recollection of who was engaged in that conversation from the voice?

A I talked to this man at the time of arrest -

Q What man? A Mr. Morrison.

MR. WOODCOCK:

I do not think Counsel understood what I - I thought he read that as if someone talking to Bert. He has got it written down as Bert doing the talking.

Q Isn't that the way you have got it written there?

A Yes sir.

Q It is Bert saying: "Say Willie?"

A Yes sir. This is an in call, and the party inside said "Hello" and the party outside said: "Say Willie, look up that little slip you put in the ledger and see how much Nate is indebted to me for." Inside: "All right."

Q Now pardon me. You haven't got that written "inside" and "outside", have you? Opposite that last statement "Willie", you have got the word "Bert"?

A Yes sir, that is right.

BY THE COURT:

Q Call the word "Bert". If you have got the man's name there, give the jury the benefit of it. They cannot guess?

A Yes sir. Woman inside: "Hello." Bert: "Say Willie, look at that little slip you put in the ledger and see how much Nate is indebted to me for." Woman: "All right, ready?" Bert: "Yep." Woman: "\$376.79."

Bert: "All right. Thanks."

Q Now will you read 186, please?

A We start on 185.

Q All right. It is a code message; that is what I want?

A Outgoing message, March 27, 1931, 5:43 P.M. Woman:

"Hello." Bert: "Johnnie there?" Woman: "Just a moment."

Johnnie: "Hello." Bert: "Hello Johnnie, get this one."

Johnnie: "Okay, go ahead." Bert: "Quids, seems, rosie, flake, gandy, which, frail, sneak, snown, smear, snipe, frame, snout, snore, smeak, swipe, that's all, 15." Johnnie: "16." Bert: "Yes, 16. Say Johnnie, if you get in touch with Andy, ask him how is everything." Johnnie: "Okay."

That is one of the messages picked out of the air by Mr. Kelly, and translated by the lady.

BY THE COURT:

Q If there are any messages identified by the lady you may read them as you go along?

MR. SLADE:

In identifying that message translated by her, was it the identical message this man took?

MR. WOODCOCK:

I have the words here. (Indicating)

MR. SLADE:

They may be similar words.

THE COURT:

Overruled. You may have an exception.

MR. WOODCOCK:

The plain English of that is: "When Rosita loaded proceed latitude 29.35 longitude 87.25."

Q. Now 188?

A. March 27, 1931. Incoming message 6:33 P.M. Bert: "Hello." Johnnie: "This is Johnnie, Bert. I heard from down below. He said it was as rough as hell. Had several thrills this afternoon. Could not get that one through. Too much what we call gum static, but got it through our friend you know. Have you any J.B.?" Bert: "Yes." Johnnie: "I've got a five word one. Do you want it?" Bert: "Yes, let her go." Johnnie: "Cabel, whims, silly, agnus, sloth."

Q. I haven't got that one. Is that all?

A. "Somebody breaking in on line. I am going to get a private line next week, someone else on this line."

Bert: "All right Johnnie."

Q. Turn to page 233, please?

A. April 12, 1931, out, at 11:44 A.M. Man: "Hello."

Bert: "Hello Harry. Mate there?" Harry: "Yes, just a minute." Nate: "Hello." Bert: "Say Nate as soon as you get your breakfast run over here. I have an operator coming here at one o'clock. I hate to leave that

fellow go, but we can't work the way we are working split time. We want to get a good boy to work day time. You know we have to keep on all the time. This boy knows every one and will get us a good boy." Nate: "I'll be over in a little while. We'll have to get something arranged."

Q Now turn to 281?

A April 5, 1931, out at 4:59. I haven't got A.M. or P.M. here -

Q Turn back to that message you just read and look at your date again. That was 233. I think you gave the wrong date? That was the page the message was on you last read. You said April 12th. It was not April 12th?

A (Witness does as requested) April 12th.

Q Where does it say April 12th?

A 4-12-31. (Indicating)

Q Is that April 12th or April 2nd, Mr. Mullen?

A April 12th.

Q Were you here when this raid was made? A Yes sir.

Q What date was that made on? A April 11th.

Q Then this could not be April 12th, could it?

A No sir.

Q Now look at your context?

OBJECTION: MR. SLADE:

I respectfully submit that is an unfair observation,

telling the witness the date is something else. The witness says that is the date.

THE COURT:

Sustain the objection. He can make any explanation.

BY MR. WOODCOCK:

Q. How is that April 12th, as you call it, written; is April written out, or is there a figure there?

A. The figure 4.

Q. What comes after the 4?

A. Dividing mark.

Q. Now I wish you would look and be sure and see whether that is 12 or 2?

A. (Witness does as requested) The 12 is here.

Q. Will you look at the conversation immediately preceding that -

BY THE COURT:

Q. Do you know now it could not be 12?

A. Yes sir. I know now it can't be.

BY MR. WOODCOCK:

Q. Look at the date of the preceding conversation, please?

A. (Witness does as requested) April 2, 1931, 4/2/31.

Q. And the one right after it? 4/2/31.

Q. What did I ask you to turn to; 279, wasn't it?

A. I do not recollect.

Q. 281. Could you turn back two or three pages to get

at the beginning of that conversation?

A (Witness does as requested)

Q What is the date and hour?

A 4/5/31, 4:59.

Q A.M. or P.M. A (No answer)

BY THE COURT:

Q If you do not know, say so?

A It is not down here. Johnnie: "Hello." Bert: "Say Johnnie where can I get one of those rubber wheel runway trucks?" Johnnie: "Where are you, on Canal Street?" Bert: "Yes." Johnnie: "I'll be right over." That is all of the conversation.

Q That is all of the conversation?

A Of that one.

Q Read on, go ahead?

A 4/5/31, time 6:35 P.M. Long distance to Montreal.

Bert: "Hello." Operator: "Hold the line for Montreal." Rush - that is the name. "Hello Bert." Bert: "Hello Rush. How are you?" Rush: "Fine. Just got back from Nassau. The deal between Consolidated and Walker getting along in fine shape." Bert: "That's good. How did you find things in Nassau?" Rush: "Kelly of the Walker tried to make it hard for us, tried to prevent us getting a license, but everything will come out in good shape. The new distillery pool will have

everything sewed up and everyone will have to come to us." Bert: "How is it I did not get word about the consignment of 4,000 to the Lyndovia?" Rush: "I don't know, I will look into it." Bert: "Wish you would. I have enough trouble on my hands here. Am working night and day. Frenchy and Mack down here, won't come in. Say the pool cannot last. I have five boats out here and doing all I can. I am pretty scared here. Did you read the clipping I sent you?" Rush: "I don't remember." They - this is Bert speaking -

Q. Have you finished?

A. No sir. - and Jerry for 1921 men and three boats, but they are good fellows, they paid me in full even for what they lost." Rush: "Sounds good." Bert: "Yes, and Goldberg lost two cars. I tell you it's hell here. They are trying to get my radio station. They are tapping the telephone wires. I am having a man come tomorrow to inspect my telephone just to be on the safe side." Rush: "What did you do about the Vancouver pool. You know they need the money?" Bert: "I sent them money. You know I sent 600 grand since I came here. I think that's doing some business, don't you?" Rush: "Sure thing." Bert: "What's your room number?" Rush: "1228. I am at the Windsor." Bert: "Stopping at the Windsor now?" Rush: "Yes." Bert: "You know

McDougal, Walker's man? They have been making trouble for him. Guess they'll deport him all right." Rush: "I know him." Bert: "Is the Captain there? Rush: "Yes. I'll get him." Captain: "Hello, Bert." Bert: "Say Captain what did you do about that boat?" Captain: "I wrote to Sherbrook -"

Q Wrote where? A Sherbrook.

Q Do you know where that is? A In Canada.

Q All right?

A " - where she was built and asked an estimate on a complete overhauling. They will wire me when they make a survey." Bert: "Was she built at Sherbrook? Then she is Canadian registry?" Captain: "Yes." Bert: "When I buy her I want a complete modern radio in her." Captain: "She is fully radio equipped. The engines are A-1." Bert: "When are you going to leave?" Captain: "Pretty soon." Bert: "I would be willing to pay all expenses for you if you could go up there and see that she was properly repaired and get her started off all right." Captain: "Sorry I can't go. They will fix her up all right. I'll get in touch with you as soon as I hear from them." Bert: "All right. Put Rush back on." Rush: "Hello Bert." Bert: "I can't call you like I did before. They closed up all the booths in the hotel since the races. I don't want to

call you from my place. I have to call you from a booth." Rush: "That will be all right." Bert: "Goodbye."

Q Those are not the only conversations you overheard by this man Bert?

A No sir.

Q And a number of them I have not asked you to read?

A No sir.

CROSS EXAMINATION:

BY MR. GRACE:

Q The only voice you identified was that of Bert. Is that correct?

A Yes sir.

Q Who do you refer to as Bert?

A Mr. Morrison.

Q How did you know it was Mr. Morrison's voice?

A Well, when the arrest was made on April 11th, I was in his home and talked to him.

Q You are not a deputy marshal, are you?

A No sir.

Q You were not a deputy marshal at that time, were you?

A No sir.

Q You are a prohibition agent; is that correct?

A Special Agent.

Q Now as a matter of fact you went there to assist in the search and seizure by virtue of the search warrant issued for the premises of Morrison?

A Yes sir.

Q You were then executing a search warrant and not a warrant of arrest?

A I did not know until after the marshal had entered the house. I stayed outside until I was called in.

Q But you assisted in the search? A Yes sir.

Q And you stated that before? A Yes sir.

MR. WOODCOCK:

May it please the Court, if Counsel is going into what was found on the search, why I am going into it too. I studiously refrained from that.

THE COURT:

I do not understand he is going into that.

MR. GRACE:

No, Your Honor, we are not.

Q And that is the time that Morrison was pointed out to you? A Yes sir.

BY MR. SLADE:

Q And it was the result of that that you now designate him as Bert Morrison? A Yes sir.

Q Independent of that you did not know who he was?

A No sir.

BY THE COURT:

Q Did you hear enough of those conversations that you became familiar with the voice, over the telephone without identifying it before you talked with the defendant, that you knew that voice when you heard it over the telephone; I mean the voice of the man

who gave the name of Bert?

A Yes. When I talked to him at the house I recognized him.

Q And that was being carried on from this location at
Canal Street where that telephone was located?

A Yes sir, Your Honor.

BY MR. WOODCOCK:

Q Didn't Mr. Talbot direct you subsequently to talk with
Mr. Morrison?

MR. SLADE:

May I finish my examination first, Your Honor?

THE COURT: All right, get through.

BY MR. SLADE:

Q The fact is it is only the result of Bert Morrison be-
ing pointed out to you on the day of the raid, in which
you assisted, that you recognized Bert Morrison?

A Yes sir.

Q And in the absence of that you did not know who Bert
was or his voice?

A No, only he said it was Bert.

Q Your attention was directed to something which you
testified as having taken place on the 12th, and now
you think it was the 2nd?

A It couldn't have been the 12th.

Q You remember this question being asked of you before
the Commissioner, and giving the following answer:

"And the last time you spoke to Bert before this occasion, was on Saturday you say. What date was that; I think it was April 12th according to my records; is that correct?"

MR. WOODCOCK:

I think the witness should be furnished with the context before being required to answer an isolated question.

THE COURT: Let him answer.

BY MR. SLADE:

Q Do you remember being asked that and giving that answer: "April 12th?" A No sir, I do not.

Q Doesn't that refer to your previous testimony here -

BY THE COURT:

Q If you said it was the 12th then, you know now you must have been mistaken? A Yes sir.

OBJECTION: MR. SLADE:

I take exception to your Honor's observation.

THE COURT:

You may have it.

BY MR. SLADE:

Q You do not profess to claim now that you took down word for word what was said over the telephone?

A No sir.

Q What you did was merely to put down your conclusion

as near as you could remember it?

A Take note of the conversations right along.

Q You did not take shorthand notes? A No sir.

A You tried to write as fast as they could speak it?

A Make notes and fill in afterwards from my memory.

Q So you subsequently, after careful consideration, you then concluded what you believed was the substance of the conversation and jotted it down?

A Immediately after the call.

Q But you did not attempt to take it down during the conversation? A No sir.

Q So when they said "Bert so and so" you did not put it down word for word, did you?

A Not verbatim, no sir.

BY THE COURT:

Q These code messages that you took down as repeated over the telephone, did you take them down as code messages? A Yes sir.

Q The rest of it you made notes and wrote it up immediately afterwards, after the conversation occurred?

A Yes, Your Honor.

THE COURT:

I will exclude his testimony as to the conversation he had with the defendant. As to the identification of the defendant, the Court will permit that to go

in as he properly identified the party talking over the telephone , showed the defendant went by the name of Bert, recited in so many of the conversations in which that name was used. I will exclude his testimony as to the conversation he had with Bert and which he says he identified as his voice from conversations he had at his home.

MR. SLADE:

Then I move all his testimony be stricken out, as there is no identification, as the only method -

THE COURT:

It is already in evidence the conversations were being had from this same telephone, and defendant resided at that place and talked over that telephone, and the same name was being used. Overruled.

MR. SLADE: Exception.

BY MR. DOWLING:

Q I understand the only voice you attempted to identify was the voice of Bert? A Yes sir.

Q You did not attempt to identify any other voice?

A No sir.

BY A JURYMAN:

Q Where did you say this man Rush was? A Montreal.

MR. HARRY F. RICHARDSON: RECALLED:

BY MR. WOODCOCK:

Q Mr. Richardson, you have been sworn? A Yes sir.

Q Are you a Special Agent in the Bureau?

A I was at the time this case was made.

Q You are no longer connected with the government?

A No sir.

Q Were you engaged in the investigation of the case against Morrison and others in the spring and winter of 1931? A I was.

Q Were you assigned the duty of listening at a telephone post on telephone Galvez 6959? A I was.

Q Did you make any notes of what you heard?

A I did, Sir.

Q How much experience have you had in listening to telephone conversations?

A Off and on over a period of about four or five years.

Q You have some entries there as being made by a man under the name of Bert. Did you subsequently talk to this Bert? A I did.

Q When was that?

A I talked to Bert, who was Bert Morrison, on April 11, 1931.

Q At any other time? A Not that I recall.

Q. Where was he when you talked to him on April 11th?

A. I talked to him in his apartment at 3327 Canal Street, and also in the office of the Special Agent in charge, in the Masonic Temple Building.

Q. Was he arrested at that time under an arrest warrant?

A. Yes sir.

Q. You talked to him after he had been brought down here?

A. I did.

Q. You recognized the voice of Bert to be that of Mr. Morrison?

A. I did.

Q. Any other voices you recognized there, or identified with the individual?

A. One who gave his name as Nate, whom we later learned and identified as the voice of Nate Goldberg. I identified it as being Nate Goldberg.

Q. Will you turn to a conversation on page 65?

A. Yes sir. (Witness does as requested)

Q. What is the date of that?

A. That was March 14, 1931, and recorded at 6:41 P.M.

Q. What does it show. Read slowly and distinctly?

A. This is Bert at his Canal Street address. "Bert talking. Take this down." -

OBJECTION: MR. SLADE:

I ask at his Canal Street residence be stricken out; talking from some residence.

BY THE COURT:

Q You mean the party talking said this is Bert?

A Yes sir.

THE COURT: Overruled.

MR. SIADE: Exception.

A (Witness continuing) "Bert talking; take this down?" Then he gave a code message, and he gave each letter of each code word, which is as follows: "Bergs, scold, feast, beach, seems, twirl, ankle, twine." That is the end of the code message. Then he says: "Hold it for an answer, will you?" Male voice from the outside: "Can't get answer probably before tomorrow. How is Joe coming around?" Bert: "All right." Outside: "Okay." That is the end of that particular conversation.

Q Next?

A This conversation is recorded on the same day at 6:50 P.M. Bert speaking: "This is Galvez 6959 calling. Connect with 3910 Galveston, Texas." Then connection was made. "Frank, this is Bert speaking. I mailed letter last night. I sent express package to Gulfview Restaurant in the same name, some little accessories the boys wanted."

Q Go ahead?

A Continuing the same message. "Wire about Marshall. Take this down February 8, March 3rd. She must have gone

home on the 3rd. \$3048.00. \$1,000 given down below for supplies and fuel. I don't know how the money was spent. I want to know how the \$1,000 was spent. He got \$1,000 down there before he left. I want to know how it was spent. Was it for supplies? If so, it is for his account. The boys wages were not mentioned. Know what I mean? If you want me to pay give me a ring." That concludes that message.

Q Turn to page 99?

A (Witness does as requested) This was recorded on March 17, 1931 at 7:45 P.M. from some man on the outside: "Hello, Joe. How is everything?" Joe: "The information Bert got today is B.S." Man outside -

Q I do not ask for that because you do not identify either of those voices, do you?

A I do not.

Q Turn to page 100?

A (Witness does as requested)

Q That is the same thing. That is Joe, and you do not recognize Joe? A No sir.

Q Turn to 169, please?

A This was recorded on March 26, 1931 at 8:18 P.M. A person outside giving his name as Lou says: "Hello Bert." This is Bert in response: "Back in town, are you? Still raining. Don't let them catch you. See Mack?"

That party will be here Sunday noon." Lou speaking from outside: "Tell you what I'll do, Bert. I'll run around and see you tomorrow." Bert: "All right, Lou."

Q That is 169?

A It starts here. (Indicating)

Q All right. Third month, 26th day, 1931, at 8:50 P.M.

A Bert speaking: "Hello." Johnnie on the outside: "Hello." Bert: "Who'se speaking, Harry?" Johnnie responds: "This is Johnnie. I was just calling a number. Buford is here. ^{other} He came to our figures." Bert: "What about the/stuff?" Johnnie: "It got in, belongs to the corporation. Did you ask Buck what he will take for it?" Bert: "How much is left out there now?" Johnnie: "About 150. It will be all right with us." Bert: "Nate there?" Johnnie: "Yes." Bert: Put him on? Buck and Osborne here got to have instructions because he's going out." Nate: " -

Q Did you recognize the voice of Nate?

A Yes, I did.

Q Who was he? A Nate Goldberg.

Q Go ahead?

A Johnnie: "Just a minute." Then there was a voice: "See that he gets proper instructions where those boys are to come to. Don't want to make any mistake." Bert: I called Montreal." Nate: "Abe Kaplan, my man, will

be in Picadilly Hotel at New York tomorrow. Call him."

Bert: "I'll meet you tomorrow and we'll talk it over.

Any of that stuff brought in last night yourself?"

Then it was very low and I could not discern what it was. Bert responded: "Okay."

Q. Will you turn back to the long distance conversation, page 65 to Galveston, Texas and give me that number of the Galveston phone?

A. Galveston 3910.

OFFER: MR. WOODCOCK:

I want to offer, with the permission of the Court, the long distance telephone slip from New Orleans, Galvez 6959, to Galveston telephone 3910 of March 14, 1931.

THE COURT:

That is the same number he gave you?

MR. WOODCOCK:

Yes, Your Honor.

THE COURT: All right.

MR. SLADE:

That comes under the same objection, ruling and exception.

MR. WOODCOCK:

Gentlemen, this is the slip to Galveston 3910.

Q. Come down now to 122?

A. (Witness does as requested) This message was recorded on March 21st at 10:00 P.M. Bert speaking: "Hello Andy,

got two for you." Andy: "Yes." Bert: now he spelled each word out - "Bergs, eclat, fussy, chasm, rose, ankle, barba." Bert says: "May hear them tonight at 65. Listen on 39 to Lassie." Andy speaking: "Will give it to you tonight if I can." Bert: "Message tells him to turn and stand by at eight, ten and twelve." Andy: "I'll send in tonight myself. I'll go up there. I'll do that tomorrow at ten. I can work him at ten without any trouble." Bert then gives another code message. "Baton, blunt, letters, H.B. capel, shoot, grill, bales, smart, shout, slime, sloop, sloth, smack, smart, shark, parol, slug, small, snipe, shark, lilac, bales, sloth, slope." That concludes that message.

Q Now turn to 143, code message there?

A (Witness does as requested) Taken on March 24, 1931, at 10:05 P.M. Bert speaking: "Mr. Andrews in?" Woman on outside speaking: "One minute." Bert: "Hello Johnnie. This is Bert." Andrews: "Hello boy." Bert: "Bergs, sub, smoke, can, club, betel, bygrass, culex, cora, stop, moral, sibyl, sedge, faith, concor, witty, fleck, sling, smart, smoke, sleet, small, smack, slope, slope;" that is all the code message. "25. Part of this is repeating last night's message. When the lady talks to you tell her to meet you today." Johnnie

speaking now. "No. 3, been with him since last night. Think its J. B." Bert: "Don't know boat 3. Let me think. Is it the Alice?" Johnnie: "Possibly until seven o'clock in the morning get better contact. That is all, is it?" Bert: That's all, good night."

Q That was 10:00 P.M.?

A 10:05 P.M. on March 24, 1931.

MR. WOODCOCK:

I call the attention of the Court to 7:06 A.M. March 25th that same message was intercepted by Mr. Kelly and identified with the word "smash" about the middle of it and marked with a question mark at the time Kelly testified.

Q I think you gave the word "slade?"

A I have a question mark after that word myself. I gave it as "sleet."

THE COURT:

I will let him read that.

OBJECTION: MR. SIADE:

May I interpose my objection. There is no identification on that that Kelly intercepted this particular message. He may have intercepted a message of similar character.

THE COURT:

I think it is identified. I will give you an exception.

MR. SLADE: Exception.

MR. WOODCOCK:

Says: "Substitute 50 Canadian Club. Balance Blue Grass for Corozal. Stop. Ready Tuesday. Wire Concord go to latitude 29.50, longitude 87.44."

I am not going to burden the Court with all these messages, but I will pick out one or two more.

Q. Go down to 215?

A. (Witness does as requested) This is recorded on April 1, 1931 at 6:15 P.M. Woman on the outside said: "Is Neal there?" Bert: "Who is this?" Woman: "Mrs. John Jameswell" - I did not get the name exactly, -

Q. That is not what I want. Go down to the message in code there?

A. (Witness does as requested) This was recorded on April 1, 1931 at 6:30. Charlie on the outside: "Take this down, Bert. This is from H.H. Bayak, barba, drill, boast, money, bunks, nashau, annoy, hifax, ready, sloth, smack, snipe, cynic, stpier, aboard, barba, bogus, olden." Then he says J.B., another message. "Bergs, spuck, sleet, adown, cuban. Now I communicated the other thing to everybody."

Q. That is the message with a variation of the letters. You read it "bunks"; Mr. Kelly recorded it as "banks". You read the word: "spuck". We have it here "speck,"

and "swlek", and you have it "swlet", intercepted 6:15, April 1st.

OBJECTION: MR. SLADE:

I object. No foundation has been laid for the identification of that. There appears to be discrepancies of a serious nature. I object on the ground it is not identified.

MR. WOODCOCK:

Same note, same message.

THE COURT:

I will let it go to the jury to decide whether it is the same message.

MR. WALLACE:

This witness intercepted this message at 6:15, April 1st, and Col. Woodcock announced the message was intercepted by radio at 6:15.

MR. WOODCOCK:

What is remarkable about it being intercepted and transferred over -

THE COURT:

The witness is testifying at the time it was transferred over the telephone.

BY MR. WOODCOCK:

Q. Is it coming inside or outside; where did the message

come from?

A From Charlie on the outside at 6:30.

MR. WOODCOCK:

Charlie at 6:30 transmitted something over the telephone to Bert which Kelly heard on the air at 6:15.

THE COURT:

The Court orders it is sufficiently identified. I will leave it to the jury as to whether it is the same message.

MR. SIADE: Exception.

BY MR. WOODCOCK:

"Mavis Barbara here but money at Nassau and Halifax.

The rest twenty four hundred from St. Pierre aboard Mavis Barbara. Can you ----. Waiting to contact lugger. Must be advised".

Q Turn to 224. Have you a code message there?

A (Witness does as requested) Yes. This message was recorded on April 1, 1931 at 11:02 P.M. This is Bert on the inside."Charlie sent these. HX. "Dayak, boils, bulge, abikn. I want him to repeat this evening's message. I did not get it. Now take this for J. F. Spare, No. 1." Charlie: "I don't have no spare." Bert: "Wait. I'll give it to you. That's right. J. F. means Miss C.B. That's the name. Quids, abgah, satin, now J.B. jolice; bergs, worse, shorn, sieve." Charlie: "What's his name; try to

get it to him tonight." Bert: Get reply to HX in the morning. Don't get reply until in the morning."

Charlie: "No spare out there?" Bert: "J.G. spare No. 2. Your call to him is J.G. Spare No. 2. Try to get J.G. Charlie, give him the general message." Charlie: "Give JG the same as given to Owens. Don't get them tonight, get them to him at seven in the morning regardless of what conditions are." Bert: "Can't get them through Let the other fellow try it?" Charlie: "I'll let the other boy try if I can't get them through."

MR. WOODCOCK:

That was intercepted by Mr. Kelly at 1:54.

OBJECTION: MR. SLADE:

I object to Mr. Woodcock making the observation that the message was intercepted.

THE COURT:

I guess you now wish to read the message that Mr. Kelly testified that he received?

MR. WOODCOCK:

Mr. Kelly intercepted it at 1:54 A.M., a number of call letters here, and then the code words, ""quids, abgah, satin, bergs, worse, shorn, sieve." I may say I checked that carefully as he read it, and it is identified. The translation of it is: "Cannot reach you tomorrow Thursday."

MR. SLADE:

Reading the translation of a message with whom; just reading from his book.

MR. WOODCOCK:

I read the translation of the message which Mr. Kelly intercepted at 1:54 A. M. , and I called the attention of the Court, that those code words were identical with the message just read by the witness.

THE COURT: I will let it go in.

MR. SLADE: Exception.

Q. What is the time?

A. That is 9:40 on April 2nd, P. M.

Q. Is that Bert giving the message, or Charlie?

A. No, that is Bert inside. "Say, Charlie, get your pencil -

Q. At what time? A. 9:40 P. M.

Q. What date? A. April 2nd.

MR. WOODCOCK:

Now may it please the Court, Mr. Kelly testified that at 6:44 P. M. April 3rd he intercepted the following message: "Dayak, white, would, sloth, simon."

Q. Those are the same words you read? A. Yes sir.

THE COURT: Different dates?

MR. WOODCOCK:

6:44 P. M., the day after the message was given. It was given at 10:50.

THE WITNESS: 9:40 P. M. that evening.

THE COURT: All right.

MR. SLADE: Same ruling and exception.

MR. WOODCOCK:

The translation is: "Must leave. Starting two Friday."

Q Now come down to page 283, a couple of code messages there?

A This was taken on April 5, 1931 at 7:00 P. M. It is Charlie speaking from the outside. "Been trying to get you since three o'clock. Take this down. JD, caber, whims, schge, gripe; another one JG, baton, whiff." Bert inside: "That all?" Charlie: "Get a large piece of paper ready. Baton, cibi, wedge, slime, small, sloop, slope, smack, slump, sloop, slope, concord, wedge, slime, small, smile, slack, -

Q Just pronounce the words?

A (Witness continuing) - "sloop, slope, both on watch, guide, bison -

Q How do you spell that guide? A G u i d e.

Q All right?

A (Witness continuing) - "bison, bizarre, label -

MR. SLADE:

I think they should be spelled. That is the only way we can possibly follow it. It makes quite a difference in reading it and spelling it.

MR. WOODCOCK:

Here is an extra copy that will help you to follow it.

A (Witness continuing) - "barba, bowl, adams, again. A mistake in the message means trouble."

Q Start there at Bison?

A "Bison, bizarre, label, cupid, barba, bowl, adams, again." That is the end of the code.

Q You have got something else there?

A "A mistake in this message means trouble." I have got more profanity. Here it is. He says: "Could not possibly be for No. 1, must be for 2 or 3 so I told him to give it to 2 or 3. He said tell the boss it couldn't be for No. 1, must be 2 or 3. Had terrible storm all day. Just hear you. Then I gave it to the Lassie. Lassie was damn slow out here; you'd think we would never see land."

Bert: "Did you see them in garage? You saw the square metal piece of the side. I have the tubes here in cotton batten. Do you want them tonight?" Charlie: "I don't think so. I am going to make an extension to the telephone." Bert: I'll call you between 10 and midnight.

How about the tubes?" Charlie: "Get them tomorrow."

Bert: "Atta boy." Charlie: "Try to get another number."

MR. WOODCOCK:

May it please the Court, on April 5, 1931, at 6:23 P. M.

Mr. Kelly testified that he intercepted the following

code message which he identified with what was read where the witness said "get a big piece of paper."

Q That is what you said? A Yes sir.

MR. WOODCOCK:

The message began there with the exception of the word - I have it here quide, and you read it guide.

THE WITNESS: Yes sir.

MR. WOODCOCK:

"Baton, cibi, wedge, slime, small, sloop, slope, smack, slump, sloop, slope, concord, wedge, slime, small, slack, sloop, slope, both on watch, stop, guide, bison, bizarre, label, cupid, barba, bowl, adams, again."

Q Now turn please to 285. Did you read that? It is all the same thing. Is there a code message on 285?

A No sir.

Q Never mind. 318. Have you a code message there?

A Yes sir.

Q Read that one?

A This was recorded on April 10, 1931 at 6:18 P. M.

MR. WOODCOCK:

I do not believe I gave the translation of that long message. Will Your Honor permit me to read it?

THE COURT: Yes.

MR. WOODCOCK: "Miss CB position 29 -

MR. SLADE: That is under the same ruling?

THE COURT: Yes.

MR. WOODCOCK:

"Miss CB 29,45, 87.45. Concord's position 29,50, 87.44.

Both on position. Stop. No boat available. Blank. For
Mavis Barbara cargo. Will advise afterwards."

THE COURT:

Gentlemen, in all these messages it has been frequently stated by Counsel as the same message. You do not take that statement as evidence. You take the messages as read by the expert the other day and from the two you say whether they are the same messages or not, and bearing in mind the relations as to the time.

A This is recorded on April 10, 1931 at 6:18 P. M. Bert inside: "Charlie there?" Woman: "He is busy; want me to get him?" Bert: "Net for a while. I got something for him." Woman: "He says for me to take it." Bert: "Bergs, witty, fleck, smear, small, sloop, sloop, fleet, shoot, small, slime, sloth, worry, shrug. It is for the Concord. Get it out tonight."

CROSS EXAMINATION:

BY MR. SLADE:

Q I understood you to say on direct examination you talked to a man named Bert on April 11, 1931? A I did.

Q That is the time you assisted in the raid?

A Yes sir.

Q And up to that time you had no idea who Charlie was, or who the others were that you heard over the telephone by name? A No sir.

Q And at the time you were at the house he was pointed out as Morrison; yes or no, please?

A No, he was not pointed out as Morrison. I learned from general conversation in there that he was Morrison.

Q That is the way you learned his name was Morrison?

A Yes sir.

Q You were there in connection with the raid?

THE COURT:

I will exclude all conversation had with him at the apartment. I take it he talked with him there.

MR. SLADE:

I merely want to show the fact that the only way he identified, he used the word Morrison -

THE COURT:

He talked to him some other time. The Court knows it is sufficient, if from this same telephone he identified the place where Morrison lived, and was using the same name in these conversations as testified to by other witnesses.

MR. SLADE:

I take an exception and move that all the evidence be stricken out.

THE COURT:

I will exclude all the testimony relating to conversations he had with him at the apartment. I will give you an exception to the rest.

MR. SLADE: Exception.

CROSS EXAMINATION:

BY MR. DOWLING:

Q Will you refer to your record, page 143, where you record the telephone conversation "Hello Johnie?"

A Yes. (Witness does as requested)

Q Do you attempt to identify the person called Johnie in there?

A I do not.

CROSS EXAMINATION:

BY MR. GEX:

Q All these were local messages from New Orleans?

A All local?

Q Yes. A No sir.

Q Where they are not local, did you designate them?

A In some instances I have.

Q When you were answering questions and reading from messages, were any of them long distance, or all local messages?

A I believe with one exception.

MR. WOODCOCK:

The message to Montreal I may say.

BY MR. GEX:

Q All the others were local? A Yes sir.

MR. WOODCOCK:

The first one he read was with Galveston.

MR. GEX:

All the others were local outside of that?

MR. WOODCOCK: That is my recollection.

BY MR. SLADE:

Q The conversations you heard, or you said you overheard, were all taken down in longhand? A Yes sir.

Q You do not profess to state you took everything down word for word? A No sir.

Q It is your conception of the substance of the conversation? A Yes sir.

BY THE COURT:

Q You wrote down what was substantially said at the time?

A Yes sir. If long, I would make notes.

REDIRECT EXAMINATION:

BY MR. WOODCOCK:

Q You would make a note and afterwards you would sit down and write it down as you believed it should have been?

A Yes, wrote on the edge of the paper, or directly on here. (Indicating)

Q On long messages you put down the substance?

A That is all I could do.

W. H. MULLEN: RECALLED:

BY MR. WOODCOCK:

Q I want to direct your attention to a conversation on April 10, 1931, isn't it?

A (Witness refers to document) Yes.

Q At 10:12 A. M. on page 304 of the record. That is one of the same types of conversations that you referred to in your testimony earlier, isn't it?

A Yes sir.

Q Will you read that please, in the same way?

A 4-10-31. Outgoing conversation at 10:12 A. M. Woman; "Hello." Bert: "Is Frank home?" Woman: "Hello Frank." Frank: "Hello." Bert: "Hello Frank." Frank: "When did you get back?" Bert: "This morning." Frank: "The boat was chased but we got it all in last night." Bert: "You don't mean all?" Frank: "The 250." Bert: "Was Ray hurt?" Frank: "Yes. Mr. Miller fell off the damn place and hit on the bank and broke his arm in four places. I thought he killed himself. I took him to the hospital. He was out with us last night but of course cannot do anything." Bert: "That's a hell of a note." Frank: "We will shoot again tonight. Will use one truck. Say Bert, what about those barges? They have been finished a month and Henry got a bill from the lumber company." Bert: "How much is the bill?" This is off talk. "Henry, how much

is that bill?" It is \$625.68." Bert: "Those fellows are out of town but will be back today. I will see them and get the money. I'll give it to you. I'll get it today. Say, you will have to fix that fellow up in 4 or 5 days." Frank: "Yes, in about four days." Bert: "Will you and Ray make up your minds when it is needed." Frank: "All right, Bert. Don't forget about the barge people?"

Bert: "I won't. We will get that today."

Q What page did you end on? A On page 305.

Q Now turn to page 308 please, and continue?

A (Witness does as requested)

Q That conversation was recorded at what time?

A 4-10-31. Out, 10:57 A. M. Woman: "Hello." Bert: "Is Pasquel home?" Woman: "No." Bert: "Tell him Mr. Bert called?" Woman: "All right."

Q That is all of that conversation?

A That is all of that conversation, yes sir.

Q This is the one I want. (Indicating) Continue on page 308?

A 4-10-31, Out, 10:58 A. M. Woman: "Hello." Bert: "Is Merchant there?" Woman: "No, he is not here." Bert: "All right."

Q That is all? A Yes sir.

Q Is there another conversation on that page; this is the conversation I mean here? (Indicating)

A 4-10-31, in, at 11:44 A. M. Bert: "Hello." Miller: "Hello, Bert." Bert: "What the hell are you trying to do to yourself, kill yourself?" Miller: "Damn near. I broke my arm in four places." Bert: "How far did you fall?" Miller: "About 12 feet." Bert: "Wonder you didn't kill yourself." Miller: "Yes, it is, but I kept going just the same. Got everything in all right." Bert: "That's good." Miller: "I'll go again tonight or tomorrow night. Say Bert, that fellow is after me again. I think we better kick in a little xx to him, that is, to go along a little. He's a good fellow. I took several bottles to him at the hotel this morning." Bert: "Yes, we'll go along with him. That will be all right until everything is sold." Miller: "I told him I would be working the balance of this week and next week on the inside. He will give me his schedule." Bert: "That will be all right." Miller: "I saw that other fellow and he promised to let me know when he would be going out. I think that is a good connection, don't you?" Bert: "It is perfect." Miller: "I'll call you as soon as I hear anything." Bert: "All right."

Q That is all?

A Yes sir.

Q Now turn back to page 259. This is the last one I will ask you to read?

A (Witness does as requested)

Q. Give the date and hour?

A. 4-3-31 -

Q. It begins there, doesn't it; that is the date?

A. Yes sir. In, 7:08 P. M. Bert: "Hello." Charlie: "I just got word from outside. He said the answer to you was yesterday." Bert: "What does he mean?" Charlie: "That the Concord was on the job yesterday. The Concord is No. 2. JF is No. 26. He is in Nassau. Shall I tell you what he told me about you?" Bert: "Sure. I guess giving me hell." Charlie: "He said why don't you get things straight. I copied one. I don't know if it will interest you or not. Do you want it? It has some language in it." Bert: "Sure, let's have it." Charlie: "Snipe, sneak, sniff, grunt, whole, polar, canon, slower than second coming, stun, adehsad, spaced, ghoel, punch, plant, nymph, abara, quill, antic, delve, scent, thirsty, clucu, drink, ansle -"

Q. An what?

A. "Ansle, beer, regard" - that is "regard to the gang."

MR. WOODCOCK:

Now I call the attention of the Court to the fact that the witness Kelly testified at 6:08 P. M. on April 3rd, he intercepted the following code: "Snipe, sneak, sniff, grunt, whole, polar, cannon, slower than second coming, stop, adebsad, spaced, ghoel, punch, plant, nymph, abira" - there is a slight variation, abira; you say

it is abara - quill, antic, delve, scent, thirst, clucu, drink, ansle - you read it ansle. It is anilse here?

A Ansle.

MR. WOODCOCK:

"Regards to the gang." The translation of that is "524 cases -

MR. SLADE: Same ruling.

THE COURT: Same ruling.

MR. WOODCOCK:

(Counsel continuing) - What is your position. shore boat slower than second coming. Stop. If not unloaded soon shall return Belize. Stop. Am getting very thirsty. Do not drink all the beer."

MR. SLADE:

The testimony goes in under our exception without repeating it?

THE COURT: Oh yes.

MR. SLADE: Exception.

EMILE MULLET: Witness, being duly sworn and examined on behalf of government, testified as follows:

DIRECT EXAMINATION:

BY MR. WOODCOCK:

Q Please state your name? A Emile Mullet.

Q By whom are you employed, Mr. Mullet?

A C. T. Patterson & Co.

Q You are the delivery man, are you?

A Yes sir, truck driver.

Q And were you in that capacity in April 1931?

A Yes sir.

Q What is C. T. Patterson & Co., what are they?

A Factory, railroad, and mill supplies.

Q They sell hand trucks? A Yes sir.

Q I show you this paper and ask you to look at it carefully and say if you saw it before? (Counsel hands witness paper and witness examines same) A Yes sir.

Q What is it? A That is a J. J. Jones -

OBJECTION: MR. SLADE: I object.

BY MR. WOODCOCK:

Q What is it; did you have anything to do in connection with that paper?

A Yes sir. It was in my charge to deliver the truck and have the gentleman sign this ticket as I delivered the truck.

Q Is that what you call the ticket?

A Yes sir, that is the dray receipt.

Q Did you deliver a truck to a gentleman on that receipt?

A Yes sir.

Q And got him to sign it? A Yes sir.

Q Does he give the address where you were to deliver it?

A Yes sir.

Q What was it?

A 3327 Canal St.

Q Do you remember this incident?

A Yes sir, I remember delivering it.

Q What kind of a truck was it?

A Flat platform truck.

Q You have a picture of it there, I think?

MR. SLADE:

I do not think that is fair, Your Honor.

MR. WOODCOCK:

I will ask the witness if -

A It was a truck just like this, a grocery flat platform truck.

Q What was the name of the man to whom you delivered that truck? A J. J. Jones.

Q And the address 3327 Canal St.? A Yes sir.

Q Did you get his receipt for it?

A Here is where he signed, down here. (Indicating)

Q Now can you see this gentleman directly in front of me? (Indicating) A Yes, I see him.

Q That is the man, is it?

A I can't swear he was the fellow.

Q Who did you see there?

A You say if I see that gentleman there? (Indicating)

Q Yes. Can you state whether or not that is the man to

whom you delivered the truck?

OBJECTION: MR. GEX:

We object to that. He has already answered he cannot.

A It has been quite a long time. I make 40 or 50 stops a day.

BY THE COURT:

Q Just say -

A I can't say.

BY MR. WOODCOCK:

Q You do recognize that delivery receipt?

A Yes, I do.

Q And is that name on there the signature of the man to whom you delivered it?

A Yes sir. There is where the fellow signed it, right there, J. J. Jones. (Indicating)

OFFER: MR. WOODCOCK:

I offer this receipt of C. T. Patterson Co. in evidence.

OBJECTION: MR. GEX:

We object to it unless he expects to connect some defendant with it.

MR. WOODCOCK:

I also connect the incident referred to in one of the telephone conversations.

THE COURT:

Yes, I recall one of the telephone conversations between Morrison and someone else. Is there any evidence that

the defendant Morrison went under the name of J. J. Jones?

MR. SLADE: Not at any time, Your Honor.

Q. When the delivery of the truck was made to this place, where did he live?

THE COURT: Is that the same address?

MR. WOODCOCK: Yes.

THE COURT: Overrule the objection.

MR. GEX: There are a number of apartments there.

THE COURT: You may have an exception.

MR. GEX: Exception.

BY THE COURT:

Q. You have no independent recollection of the man you delivered the truck to, as I understand?

A. No sir, because I never paid that much attention, because it was late and I wanted to hurry up.

OFFER: MR. WOODCOCK: I offer that as G-71.

Q. You say that is a picture of the truck you delivered?

A. Yes sir.

OFFER: MR. WOODCOCK:

I offer this in evidence marked G-72.

CROSS EXAMINATION:

BY MR. SLADE:

Q. Did you ever see this paper before? (Indicating)

A. No sir.

Q Do you know where it came from? A No sir.

Q Do you know the make of that truck?

A That is a Fairbanks truck.

Q Was that a Fairbanks truck?

A Yes sir, that is all we handle, Fairbanks trucks.

OBJECTION: MR. SLADE:

I object to that as incompetent.

BY THE COURT:

Q Is that a correct reproduction of it? A Yes sir.

THE COURT: Overruled.

MR. SLADE:

Does Your Honor limit it to that picture?

THE COURT:

Yes. Disregard all the printing on the sheet.

MR. WOODCOCK: I will cut it off.

BY MR. SLADE:

Q All you know is then your firm sold the truck, somebody gave an order for it, you as messenger delivered it, and you got a receipt for it? A Yes sir.

Q You do not know who ordered it? A No sir.

BY THE COURT:

Q I believe you did say you delivered it to that address?

A Yes sir.

BY MR. SLADE:

Q That was an apartment house. You do not recall that either?

A I don't remember.

JOHN FISCHER: Witness, being duly sworn and examined on behalf of government, testified as follows:

DIRECT EXAMINATION:

BY MR. WOODCOCK:

Q Please state your name? A John Fischer.

Q What is your position?

A I did work for C. T. Patterson & Co. on the City sales desk.

Q They sell trucks similar to that? (Counsel hands witness document and witness examines same) A Yes sir.

Q Do you remember in April 1931 selling a truck like that to be delivered at 3327 Canal St.?

A Yes sir, I do.

Q How was that sale made? A What do you mean?

Q I mean was it a telephone sale, or did the man come in there? A Came in the office and bought it.

Q He came in the office and bought it?

A Yes sir.

Q Did you talk with him? A Yes sir, I did.

Q How long did you talk with him?

A I guess about fifteen minutes.

Q What name did he give you?

A I believe the name was Jones.

Q Did you have anything to do with the bookkeeping of
the concern? A No sir.

BY THE COURT:

Q Do you know who bought the truck on that occasion?
A Yes sir.

BY MR. WOODCOCK:

Q Could you or not identify those papers?
A I know the truck was \$21.80, and equipped with rubber
tire wheels.
Q But you have never seen these papers here? (Indicating)
A No sir.

Q You do not keep those? A No sir.

Q Could you say whether this gentleman in front of me is
the man you sold it to? (Indicating)

OBJECTION: MR. GEX:

I do not think that is fair.

THE COURT: Overruled.

MR. GEX: Exception.

A He looks something like the man who came in and bought
the truck, but I can't say for sure. It has been a
couple of years ago.

OBJECTION: MR. GEX:

We ask the question be excluded. It is the opinion of
the witness, and not identification.

THE COURT: Overrule the objection.

MR. GEX: Exception.

CROSS EXAMINATION:

BY MR. SLADE:

Q You would not swear at all on that subject?

A What do you mean, Sir.

Q That he is the man?

A I would not swear to it. Just like I say, I am not sure.

REDIRECT EXAMINATION:

BY MR. WOODCOCK:

Q You are Mr. Fisher, aren't you? A Yes sir.

G. ANDRESEN: Witness, being duly sworn and examined on behalf of government, testified as follows:

DIRECT EXAMINATION:

BY MR. WOODCOCK:

Q Please state your name? A G. Andressen.

Q Mr. Andressen, you are employed by the C. T. Patterson Co.? A I am.

Q Were you in their employ in April 1931?

A Yes sir.

Q Do you remember selling a truck to be delivered out on Canal St. like that? (Counsel hands witness document and witness examines same) A Yes sir.

Q Whom did you sell that truck to?

A I think the man's name was J. J. Jones.

Q Did you talk with him when the sale was made?

A Yes sir.

Q Do you have anything to do with the bookkeeping of the concern?

A No sir.

Q You have nothing to do with those papers? (Indicating)

A No sir.

Q Was the truck paid for in cash? A Yes sir.

Q And ordered delivered? A Yes sir.

Q Do you think you could recognize the man now if you saw him? A Possibly.

BY THE COURT:

Q Let the witness go down and look among all those, and see if you can find the man who in your judgment was the man?

A (Witness does as requested) This man here. (Indicating)

BY MR. WOODCOCK: Which one?

By THE COURT:

Q Put your hand on him? A (Witness does as requested)

BY MR. WOODCOCK:

Q That looks like him? A Yes sir.

BY THE COURT:

Q That is your best judgment that is the man?

A That is my best judgment, yes sir.

MR. WOODCOCK:

Let the record show the witness points out the defendant Morrison.

CROSS EXAMINATION:

BY MR. SLADE:

Q Before you came here to testify, did you talk to any official or investigator from the District Attorney's office?

A No sir.

Q They did not know what you knew about this matter. Nobody asked you any questions on the subject?

A No questions.

Q And the District Attorney did not know what you were going to testify when you came here?

MR. WOODCOCK:

Are you referring to me now as the District Attorney?

MR. SLADE: No.

MR. WOODCOCK: I never saw the man until today.

MR. SLADE: I didn't think you did.

Q Didn't somebody tell you the purpose for which you were called here?

A I knew why I was being called here.

Q Who told you that?

A Came in a subpoena. We went before the Grand Jury.

Q And before you went before the Grand Jury who did you talk to?

A An officer came in and asked us if we knew anything about it.

Q What is the name of that officer?

A I don't know.

Q You never had any business dealings with the man?

A No sir, not before that time.

Q There was no specific reason why you should recall any particular person in 1931 because he bought a small truck?

A Well, at the time the gentleman came in it was around noon time, I believe, and he wanted a particular truck, I think, equipped with rubber tires.

Q And you had that kind of truck?

A We had that kind of truck, but had to change the tires.

Q That was in 1931. Is there any particular reason for memorizing that, except you had a truck and sold it?

A The gentleman paid cash for the truck, and one incident that made us recall the truck, he displayed a large roll of bills.

Q That did not impress anything on your mind as to the man. He paid you for the truck and you got the money?

A That is right.

Q That is all you were interested in?

A That is all.

THE COURT: That is all testified to.

MR. SLADE:

I am examining him, Your Honor.

R. H. CARTER, JR. Witness, being duly sworn and examined on behalf of government, testified as follows:

DIRECT EXAMINATION:

BY MR. WOODCOCK:

Q Please state your name? A R. H. Carter, Jr.

Q Mr. Carter, you are United States Commissioner?

A For the Eastern District of Louisiana, yes sir.

Q For the United States Court? A Yes sir.

Q I show you four papers and ask you to tell what each one is separately? (Counsel hands witness papers and witness examines same)

A There are five here altogether.

Q What is the top one?

A The top one is a bond made out by myself, United States vs. Bert Morrison, on the 22nd day of April 1931. The surety on this bond is the National Surety Co. The bond is signed by Bert Morrison, and he gives his address as 3327 Canal St., and the National Surety Company's representative.

Q Does Mr. Morrison's signature appear on the paper?

A It is signed by him, yes.

Q And taken before you? A Yes.

OFFER: MR. WOODCOCK:

I offer this paper in evidence marked G-73.

OBJECTION: MR. SLADE:

We object on the ground it is irrelevant and immaterial.

THE COURT:

The fact that he gave bond is not before you, gentlemen of the jury, but the signature and address is before you.

MR. SLADE:

They will see the whole paper. I do not think it is fair to these defendants -

THE COURT:

I will instruct the jury to disregard all of it except the address and signature.

A (Witness continuing) The next one is a bond, United States vs. Joseph O'Neal, signed the 24th day of August 1931.

Q Under what address?

A It gives his address on August 24th as 2924 So. Carrollton Ave.

Q That is his signature there?

A That is his signature.

BY THE COURT:

Q That is the address he gave at that time?

A Yes sir.

OFFER: MR. WOODCOCK:

I offer this paper in evidence merely for the signature and the address.

MR. SLADE:

I assume the objection made and exception --

THE COURT:

You may have it to each paper. The same instructions as to that paper that I gave you about the other one, gentlemen of the jury.

A (Witness continuing) The next one is United States vs. Joseph O'Neal, made out January 30, 1933, signed by Joseph O'Neal, giving his address as 1937 Napoleon Ave.

OFFER: MR. WOODCOCK:

We offer this paper in evidence merely for the address and signature, marked G-75.

A (Witness continuing) This next one is the case of United States vs. Joseph O'Neal, which refers to the case at hand here, but did not give any address at the time. It was made out on January 23, 1933, and is signed by Joseph O'Neal.

OFFER: MR. WOODCOCK:

I offer this in evidence for the purpose of the signature, marked G-76.

A (Witness continuing) And the last one is Pascal Tuminello. It is signed by Pascal Tuminello, and gives the address 1423 North Galvez St., signed by myself on February 16, 1932.

OBJECTION: MR. WAGUESPACK:

I object to that; nothing to connect Pascal Tuminello with that.

THE COURT:

Anything about making a comparison of his signature to any other papers?

MR. WOODCOCK:

Just a question of his address, that is all.

THE COURT: To show his residence?

MR. WOODCOCK:

Yes, Your Honor. We offer it only to show the location of his residence.

THE COURT:

Gentlemen of the jury, in all cases of bonds offered by Mr. O'Neal, pay no attention to the fact that he executed several bonds. The only point these are admitted on, is to show his handwriting and the place of his residence.

MR. WOODCOCK:

I would like the privilege of showing the signature which is already in evidence. They are looking at the other signature of Joseph O'Neal. This is already in evidence, G-38. (Indicating)

MR. SLADE:

They have the exhibits before them.

THE COURT:

That can come up in the argument.

MR. GRACE:

Will Your Honor instruct the jury that the date of the residence would be taken only as the date of the bond?

THE COURT:

Oh yes, that is true, gentlemen of the jury. It will be only evidence of his residence on that date.

DR. SAM B. SAIEWITZ: Witness, being duly sworn and examined on behalf of government, testified as follows:

DIRECT EXAMINATION:

BY MR. WOODCOCK:

Q Please state your name? A Dr. Sam B. Saiewitz.

Q Doctor, you are Dr. Sam B. Saiewitz?

A Yes sir.

Q Practicing in New Orleans? A Yes sir.

Q Do you have any connection with the Touro Infirmary?

A Yes, I am on the staff of the Touro.

Q Were you on the staff of that Institution in April of 1931? A Yes sir.

Q Will you produce the records of admission to that Infirmary during the year 1931?

A Well, there are no records of admission, but there is a record of the emergency room.

Q What does that record of your emergency room show?

OBJECTION: MR. SLADE:

I object to what it shows.

MR. WOODCOCK:

I will bring him down to the case.

Q Will you state whether or not the records of your hospital show the admission of one Ray Miller in the first part of April 1931 for the treatment of a broken arm?

OBJECTION: MR. HOLLINS:

I object. There is no identification of this defendant.

THE COURT:

I do not think so far the witness should testify from the record. He has not been qualified.

BY MR. WOODCOCK:

Q Who keeps these records?

A They are kept in the record room at the Touro Infirmary in the vault.

Q Who make the entries?

A The entry is made by the intern in charge of the emergency room at the time.

Q If you were in charge you would make the entry?

A Yes sir.

Q Did you make that entry there?

A No sir, I did not.

Q Do you know who did make it?

A No sir. The only one I can say is -

Q Is that your name there?

A Yes, but that is signed by the interne. I do not sign it.

BY THE COURT:

Q Do you know anything of your own knowledge about treating this man Miller? A Yes sir.

Q You have recollection of treating Mr. Ray R. Miller for what?

OBJECTION: MR. GRACE:

I object on the ground it is a privileged communication between the patient and his Doctor.

THE COURT: Overruled.

MR. GRACE: Reserve a bill.

BY MR. WOODCOCK:

Q What did you treat him for?

A I treated him for a fracture of the arm near the wrist.

Q What date? A I first saw him on April 9th.

Q Was it a serious fracture, or tell us what you know about it?

A As well as I remember, it was a fairly serious fracture. It was into the joint of the wrist, if I remember correctly.

Q What treatment did you give him?

A The forearm was placed in a plaster splint, and subsequent to that given the usual treatment of massage and manipulation.

Q Put in a splint or cast? A Yes sir.

Q Did he come back for any further treatment?

A Yes, he came back for further treatment for several weeks.

Q Would you know him when you see him?

A I think so.

THE COURT:

I will permit you to point out the defendant.

MR. WOODCOCK:

I don't know him.

MR. GEX:

The witness ought to know.

MR. HOLLINS:

Any Doctor treating him for two or three weeks should know him.

BY MR. WOODCOCK:

Q Come down here and look around and see?

BY THE COURT:

Q Go down there and look all around and see if you can find the man?

A (Witness does as requested) This man right here. (Witness indicating the defendant Ray Miller)

CROSS EXAMINATION:

BY MR. HOLLINS:

Q Doctor, all the information you gained about the condi-

tion of this man was gained while you were treating him as a physician, was it not? A Yes sir.

Q And his identity likewise? A Yes sir.

Q He came to you as a patient? A Yes sir.

Q And you were his physician? A Yes sir.

OBJECTION: MR. HOLLINS:

I move that all of the testimony of this witness be excluded, as any information gained thereby was privileged as between the doctor and his patient, which ~~must~~ cannot be introduced in evidence.

THE COURT: Overruled.

MR. HOLLINS: Reserve a bill.

REDIRECT EXAMINATION:

BY MR. WOODCOCK:

Q That is an emergency ward in a public hospital?

A Yes sir.

Q And the man came there? A Yes sir.

THE COURT:

Take a recess until two o'clock.

Adjourned until 2:00 P. M.

2:00 P. M. AFTER RECESS:

C. E. WHITMORE: Witness, being duly sworn and examined on behalf of government, testified as follows:

DIRECT EXAMINATION:

BY MR. WOODCOCK:

Q Please state your name? A C. E. Whitmore.

Q What is your position, Mr. Whitmore?

A Assistant Secretary of the Conservative Homestead Assn.

Q You are the Secretary of the Association whose records these are? (Indicating)

A Assistant Secretary.

Q Now have you brought a ledger sheet up here?

A Yes sir. (Witness produces document)

Q Did you make those entries on that sheet yourself?

A Yes sir.

Q Will you refer to the entry which relates to the apartment occupied by a man named McGregor?

A Yes sir. (Witness does as requested)

Q What address does this sheet refer to in this city?

A The Demoruelle Apartments, 7530 St. Charles Ave.

Q Have you seen these records here?

A I have seen them in the course of my work, all of these records.

Q Are these books of original entries?

A Yes sir, those are the books of original entries.

Q Did that young lady up here make these? (Indicating)

A Yes sir. She is one of the cashiers.

Q Will you explain to the jury how in the original entry here Mr. McGregor is shown occupying apartment 1,

whereas on one of your entries there he is shown occupying apartment 11 in that premises?

A. Parties coming in to make payment of rent at the home-
stead would say what apartment they occupy, and would
be given a receipt for their rent. This paper, (indicat-
ing) would be made from their prepared statement, and
also in connection with rent notes. Then we dictate the
transcript on to the cash book, and from that these
sheets are posted.

Q. You posted those sheets?

A. I posted those sheets. The error in putting down apart-
ment 1, for apartment 11 may have been made through -
OBJECTION: MR. SLADE: I object.

THE COURT: Sustain the objection.

BY MR. WOODCOCK:

Q. Will you say whether you have any other gentleman on this
same sheet at the time this man was occupying apartment
No. 11?

A. Yes, but before Mr. Webster paid \$80.00 for apartment
11.

Q. In your next month's record of McGregor, how do you
charge him up?

A. The following month this sheet does not refer to any
particular apartment.

Q. Will you examine these tickets and say whether the

apartment - well, that is in evidence.

THE COURT: That is in evidence.

MR. WOODCOCK:

I would like this sheet kept by the witness put in evidence. I think it is explanatory of itself.

THE COURT:

Let it go in with that explanation.

CROSS EXAMINATION:

BY MR. SLADE:

Q You make these yourself? A Yes sir.

Q And of course the only information you have of the content of these, is the information you got from somebody else. You personally know nothing about it, except you got certain information and you transmitted that on the sheets? A That is correct.

Q But you did not write those, those were made by somebody else, and you take what you find on your record?

THE COURT:

The sheets in the package there show this man McGregor occupied apartment No. 1?

MR. WOODCOCK:

It went in under No. 11.

THE COURT:

If they object to it, it can be taken out.

MR. WOODCOCK:

And the testimony of this witness stricken out; it is entirely satisfactory.

THE COURT: All right.

W. C. HART: RECALLED:

BY MR. WOODCOCK:

Q Mr. Hart, when you were here on the witness stand yesterday, my recollection is that I did not ask you as to whether or not you had cutterized a ship named Ouiatchouan. Now I ask you whether you did cutterized that ship, the name spelled O u i a t c h o u a n, on or about November 14, 1930?

A Yes sir.

Q Will you say where she was and pronounce the name for me, please?

A I will try. At about 7:00 P. M. on the night of the 14th of November 1930, I very nearly ran down a schooner at anchor, vessel anchored without lights, and on playing my search light on her, I found it to be the Outch-u-wan. Whether that is the correct pronunciation or not I don't know. I call it the Outch-u-wan. That is my way of pronouncing it.

Q In your experience of some years cutterizing boats, can you say what kind of boat that was?

A Yes, two-masted schooner.

Q Is that all you can say about her, as to her occupation

or anything else?

A Well, I have trailed probably 30 to 40 vessels in the six years I have been down here in the Gulf, and I know she is one of the vessels that have been trailed by other vessels in my division.

OBJECTION: MR. SLADE:

That is not in response to the question. We ask his answer be excluded.

THE COURT: Overruled.

MR. SLADE: Exception.

BY MR. WOODCOCK:

Q Do you know what kind of boat she was, or what her occupation was from your past experience or opinion?

OBJECTION: MR. SLADE:

How can he testify to that?

THE COURT:

You can express an opinion if she had any distinct characteristics that you know of.

A As a vessel, no distinctive characteristics. She was a two-masted schooner.

By MR. WOODCOCK:

Q That is all you can say about her. Will you look at your records and state whether or not in February 1916 you cutterized a ship called the Fisher Lassie?

A I did.

Q. What time of day did you pick her up and where?

A. To the best of my knowledge without referring to the official log -

Q. I prefer you refer to it and be accurate in your statement?

OBJECTION: MR. SLADE:

If the witness cannot state from memory, all right.

BY THE COURT:

Q. Have you any independent recollection without the log?

A. Yes sir, I have a very good idea. I remember picking up the Fisher Lassie in Vancouver, B. C.

BY MR. WOODCOCK:

Q. What date? A. About the middle of the month.

Q. What latitude and longitude?

A. It was about 29 -

Q. I ask you to refer to your notes and let us get this accurately. Refresh your recollection by looking at your log book?

OBJECTION: MR. GRACE:

We make the same objection we made yesterday with reference to the log book.

THE COURT: Yes.

MR. GRACE:

We reserve a bill of exception.

A. (Witness refers to log) At 9:10 we were abeam of the

motor boat Fisher Lassie at Vancouver, B. C., and changed courses to the southerly and commenced trailing -

Q What latitude? A 29.41 north 88.12 west.

Q Can you express from your experience in cutterizing and trailing boats, an opinion as to the occupation or calling of this ship? A Well -

OBJECTION: MR. SLADE:

The question is first, yes or no.

THE COURT:

Let the witness describe the characteristics.

A The characteristics of this particular vessel, she was a motor vessel, a vessel that is common to the northwest coast. She is not a schooner, she is a motor boat.

BY MR. WOODCOCK:

Q In what waters did you find her?

A Gulf of Mexico, east of Chandeleur Island.

Q She was steering a course?

A Yes, she was under way.

Q And what course was she steering?

A Well, I really don't know, Sir.

Q Now will you state whether or not around April 22, 1930, you cutterized a ship called the Leither?

A (Witness refers to documents) A No sir.

Q You did not? A No sir.

Q The Fisher Lassie you testified as to what, February 16, 1931?

A Yes sir.

OBJECTION: MR. GEX:

We move all this testimony be excluded, nothing pertinent to the issues.

MR. WOODCOCK:

One of the Overt Acts charged in the Indictment is the cutterizing of this vessel Ouiatchouan on November 14, 1930.

THE COURT:

Government officials cutterizing ships is not an Overt Act.

MR. WOODCOCK:

I stand corrected. The Indictment is that on or about November 30 rum runners of the Ouiatchouan were standing by in the waters of the Gulf of Mexico off Chandeleur Island loaded with large quantities of liquor.

THE COURT:

I think the witness' testimony is too vague about that. I will exclude the testimony. I think the testimony amounts to nothing more than there was just a ship or boat there.

MR. WOODCOCK:

He gave her name and position.

THE COURT:

That does not help any.

MR. WOODCOCK:

If we cannot prove the vessel was a rum runner, that is the end of it, but certainly two facts -

THE COURT:

You expect to offer further testimony that she was a rumrunner?

MR. WOODCOCK:

I cannot say positively now, but if I cannot, that will be the end of it.

THE COURT:

Unless he offers further testimony showing it was a rumrunner, it goes out.

MR. SLADE:

Do I understand Your Honor's ruling now the testimony stands?

THE COURT:

On Counsel's statement that he will offer further testimony to prove she was a rumrunner.

MR. SLADE:

He says he does not know.

THE COURT:

He does not know whether he can or not. If he does not, it will be excluded.

MR. SLADE: Exception.

WILL HYDE: Witness, being duly sworn and examined on behalf of government, testified as follows:

DIRECT EXAMINATION:

BY MR. WOODCOCK:

Q Please state your name? A Will Hyde.

Q Where do you live, Mr. Hyde? A Indian Village.

Q And where is that with reference to Slidell?

A About seven miles out from Slidell.

Q Is that in the State of Louisiana?

A Yes sir.

Q Near what river is Indian Village?

A Pearl River.

Q Is there a landing near your house?

A Right at my house.

Q Boats sometimes land there, do they?

A Yes sir.

Q Will you state whether you can recall that in December of 1930 two men came to see you who were strangers up to that time? A Yes sir.

Q What names did they give you?

A Johnie Garcia.

Q And what other name was given you? A Mr. O'Neal.

Q Do you remember whether he gave you an initial or not?

A No sir.

Q Just Mr. O'Neal and Johnie Garcia? A Yes sir.

Q What did these gentlemen talk to you about when they came to your house?

A They told me they wanted me to help unload some freight.

Q Did they engage you to do that work?

A Yes sir.

Q And did they ask you to employ some others to help you?

A Yes sir.

Q And when did they say that the freight was to be unloaded?

A At night.

Q Whom did you engage to help you?

A Austin Williams, Elmer Hyde, William Porter, James Porter, Gene Porter.

Q Your own boy was in it?

A Yes sir.

Q Is that Elmer Hyde?

A Yes sir.

Q That is all you can recall now?

A Leonard Trouleau.

Q Are all these men colored men?

A Yes sir.

Q They live in that vicinity?

A Yes sir.

Q Well now, did the boat come in with the freight?

A Yes sir.

Q And how did you know that she was there?

A Some fellow came to the house and told us.

Q You know who that fellow was? A No sir.

Q What did you do after he told you that?

A Went on down there.

Q Now just what did you do; tell me in your own words just what you did?

A I unloaded on trucks.

Q Unloaded it in trucks? A Yes sir.

Q What did the packages or boxes look like, or whatever it was? A Looked square.

Q Were they boxes or bags? A They were mixed.

Q Will you look at that and say if any of it looked like these packages here? (Indicating)

A Kind of like that.

Q Now were you on the shore or in the boat?

A I was ashore.

Q And how close to the boat were the boxes?

A About like from the wall to here. (Indicating)

Q And how many trucks were there out there?

A Well, I don't know, Sir, how many were out there.

Q And you passed the liquor or the packages from the boat on to the trucks? A Yes sir.

Q Where did the trucks go?

A I don't know, Sir.

Q You had nothing further to do with it?

A No sir.

Q Were you paid anything for that work?

A Yes sir.

Q Who paid you? A Mr. Joe O'Neal.

Q So you do recall that his name was Joe O'Neal?

A Yes sir.

Q How much did he pay you? A \$7.50.
Q Now did you unload any more freight or packages later on that month? A Yes sir.
Q How many other times? A About three.
Q In other words, four in all? A Yes sir.
Q Were you paid for each time? A Yes sir.
Q And who paid you? A He paid me.
Q Mr. Joe O'Neal? A Yes sir.
Q Now did he pay only you, or did he give you the money for the other men?

A Gave it to me for the rest of them.

Q How much apiece? A \$1.50.
Q Is that all they got? A I mean \$7.50.

BY THE COURT:

Q Was this unloading in the night time?

A Yes sir.

BY MR. WOODCOCK:

Q When did you learn that you were unloading liquor?
A I don't know.

OBJECTION: MR. SLADE: I object.

BY THE COURT:

Q Do you know now? A Yes sir.
Q Did you know it was liquor? A Yes sir.

BY MR. WOODCOCK:

Q The question was when did you learn that?

A Since I been coming here.

OBJECTION: MR. SLADE: I object.

BY MR. WOODCOCK:

Q Did you know of your own knowledge it was liquor or heard them talking about it?

A I didn't see none of it. I heard them talking about it.

THE COURT:

Exclude his evidence, gentlemen as to the liquor.

BY MR. WOODCOCK:

Q Packages like that? A Yes sir.

Q Unloaded at night off the boat? A Yes sir.

Q Do you know the name of the boat? A No sir.

Q I will ask you after that was all done if you remember coming down here to New Orleans with a man named Mitchell, wasn't it? A Yes sir.

Q And where did Mr. Mitchell go?

A I can't call the name; to the jail, I guess. They call it another name.

Q Detention House? A Yes sir.

Q You were not under arrest; you just went with Mitchell there? A Yes sir.

Q Whom did you see there? A Mr. Joe O'Neal.

Q Was he inside the Detention House or outside the Detention House? A He drove up outside.

Q Will you state whether or not he gave you any money at that time? 608

OBJECTION: MR. SLADE:

That certainly is not binding upon anybody. He had been arrested.

MR. WOODCOCK:

No one was arrested at that time.

MR. SLADE:

You just said he was in the Detention House.

THE COURT:

He said outside the Detention House.

BY MR. WOODCOCK:

Q Did he say whether he would give you any money at that time? A He gave me \$100.00.

Q What did he say this \$100.00 was for?

A Well, finish paying the boys off.

Q How much of the \$100.00 did you give to the boys?

A Well, I don't know. I paid them off.

Q You paid them off?

A I dealt square with them.

Q Do you know the name of this boat?

A No sir, I can't read.

BY THE COURT:

Q You know Mr. Joe O'Neal, do you?

A I ain't seen him in two years.

Q You knew him at that time?

A Yes sir.

BY MR. WOODCOCK:

Q That was the name he gave you? A Yes sir.
Q You had never seen him until he came to your house?
A Yes sir.
Q And you stated he said his name was O'Neal?
A Yes sir.

OBJECTION: MR. SLADE:

I object to the question on the ground it is leading.

THE COURT: Overruled.

MR. SLADE: Exception.

BY MR. WOODCOCK:

Q Austin Williams was up there with you?
A Yes sir.
Q He helped? A Yes sir.

CROSS EXAMINATION:

BY MR. GEX:

Q Where did you say this Indian Village was, on Pearl River? A Yes sir.
Q Do you know where Kiln, Miss. is? A Yes sir.
Q How far is that from Indian Village?
A I can't tell you, but I know where the Kiln is. It is off from Bay St. Louis.
Q That is in Mississippi? A Yes sir.
Q Did you ever unload any liquor at the Kiln?
A No sir.
Q And this was in December you say you unloaded this

stuff in Louisiana? A Yes sir.

Q How far is Indian Village from New Orleans, do you know?
A Sixty-seven miles from Slidell.

Q Do you know a man named Lou Cameron? A No sir.

Q Have you ever had any agreement with him about unloading liquor anywhere? A No sir.

Q About handling liquor? A No sir.

Q Do you know a man named Henry Dandridge?
A No sir.

Q You never had any agreement with him about handling liquor? A No sir.

Q Do you know Sam Dandridge? A No sir.

Q Jim Dantzler? A No sir.

Q Talbot Green? A No sir.

Q N. T. Haas? A No sir.

Q John Knight? A No sir.

Q Blaine Lee? A No sir.

Q Buster Malini, Tom Malini and Philip Malini?
A No sir.

Q You do not know any of them? A No sir.

Q You had nothing to do with unloading liquor in Mississippi at all? A No sir.

Q You do not know any of them? A No sir.

Q You had nothing to do with unloading liquor in Mississippi at all? A No sir.

Q You were employed by some white man, whose name you do not know, in Louisiana? A No sir.

Q And you do not know the name of the boat?

A No sir.

Q All you know about this thing is that you unloaded a boat at Indian Village? A Yes sir.

Q You do not know these other men? A No sir.

Q Isn't Kiln about 50 miles from Indian Village?

A I don't know.

Q You know distance. Isn't that about right, 50 miles; I mean by road?

OBJECTION: MR. WOODCOCK:

I object to that as leading. It isn't a fact; it isn't that far. I have ridden over the road and it isn't anything like that far.

A I went there by boat, not automobile.

Q By boat it is much further? A Yes sir.

Q About 100 miles by boat?

A I don't know, but I went by boat.

Q Do you know how far by boat 100 miles would be, by boat?

A No sir. I didn't ask the captain how far.

Q Well, you don't know the distance?

A No sir. I was just working on the boat.

MR. GEX:

We move that the testimony of this last witness be

stricken out, there being no identification, nothing in reference to this charge here.

THE COURT:

Restrict it to the defendant Joseph O'Neal.

MR. GEX: Exception.

MR. WOODCOCK:

Now Johnie Garcia was one of the men he said went up there with Joseph O'Neal.

THE COURT: I believe he did.

A JURYMAN:

When Mr. Woodcock first asked him what he was hired to do, what was it he said he was hired to unload, bricks?

MR. WOODCOCK: Freight.

MR. GEX:

Let the record show I object for the Mississippi defendants to that testimony.

THE COURT:

I will restrict the testimony to the defendants Garcia and Joseph O'Neal.

OBJECTION: MR. DOWLING:

I object to the testimony going in as far as Garcia is concerned, as not having been identified by the witness.

THE COURT: Overruled.

MR. DOWLING: Reserve a bill.

MR. O'NEAL:

The same on behalf of the defendant, O'Neal.

THE COURT: Overruled.

MR. O'NEAL: Reserve a bill.

AUSTIN WILLIAMS: Witness, being duly sworn and examined on behalf of government, testified as follows:

DIRECT EXAMINATION:

BY MR. WOODCOCK:

Q Please state your name? A Austin Williams.

Q Where do you live?

A Seven miles east of Slidell, known as Indian Village.

Q Do you know Will Hyde? A I do.

Q Do you remember in December of 1930 having some business with him? A Yes sir.

Q What was it?

A Carrying some freight he called it.

Q That is what he called it?

A That is what he called it, yes.

Q What part of it did you do?

A I worked the boat in the hold all the time, unloading it.

Q You were in the boat? A Yes sir.

Q And passed it out? A Yes sir.

Q What was the nature of it, what did you pass out?

A Some sacks about like that (indicating), although smaller, and some cans and boxes, and what we call demijohns wrapped in cane.

Q You knew what you were hauling?
A After the third loading I knew what it was.
Q What was it? A Whiskey.
Q How many times did you help? A Four times.
Q How much did you get paid?
A I got \$35.50 for the four times.
Q Who paid you? A Will Hyde.

CROSS EXAMINATION:

BY MR. GEX:

Q Did you ever unload any liquor at Kiln, Miss.?
A No sir.

MR. GEX:

Let all the Mississippi defendants stand up? (Defendants stand up) Let the record show all the Mississippi defendants stood up.

Q Do you know any of these defendants here? (Indicating)
A No sir.

Q Ever unload any whiskey with them? A No sir.

Q Ever have any agreement with them to bring whiskey into the United States and unload it?

A No sir. I never been to Kiln, Miss.

Q You never have been to Kiln, Miss.

A No sir, I never been there.

Q You do not know any of these boys?

A No sir, I don't know them.

Q Do you know how far Kiln is? A No sir.

Q Kiln is in Mississippi, and Indian Village is in Louisiana? A Yes sir.

CROSS EXAMINATION:

BY MR. SLADE:

Q Do you know any of these people around this table?
(Indicating) A No sir.

Q You never had any business with them either?

A No sir.

Q That applies to Goldberg, Morrison, O'Neal, and all these other people. (Indicating) You never did have any business with them?

A I don't think. I never seen them before.

L. P. ADAMS: RECALLED:

BY MR. WOODCOCK:

Q Mr. Adams, I ask you what that record is? (Counsel hands witness document and witness examines same)

A That is a record of the telephone in the name of R. Miller.

Q And what telephone service does it give?

A Residence telephone Uptown-6113.

Q Was that in force in January and February 1931?

A Yes sir.

OFFER: MR. WOODCOCK:

I offer this in evidence.

OBJECTION: MR. HOLLINS:

I object. There has been no testimony to connect the defendant with it.

MR. WOODCOCK: I think there has.

THE COURT:

Has there been any other testimony about these telephone conversations being from that telephone number?

MR. HOLLINS: No, Your Honor.

MR. WOODCOCK:

No, but this is preliminary to showing a telephone call to that number from Bay St. Louis from the rooms where Jones, Buckley and Meyer were staying.

THE COURT:

Testified they were staying?

MR. WOODCOCK: Yes, Your Honor.

THE COURT:

If you make that connection I will permit it to go in.

If not, it will be excluded.

MR. WOODCOCK:

I will say in frankness to the Court I won't be able to show actual telephone conversations. I do not think that is necessary.

THE COURT:

I will permit you to show there was a message from the

premises where these other defendants were at that time, to this defendant.

MR. WOODCOCK:

Any evidence tending to show communication or association together is admissible in conspiracy.

OBJECTION: MR. HOLLINS:

I object, and reserve any further objection.

THE COURT:

I will not let it go in unless it is connected.

MR. WOODCOCK:

It will be of no possible benefit to any one unless it is connected, of course.

Q What is this document? (Counsel hands witness document and witness examines same)

A That covers the residence telephone in the name of Charles Andres, 2748 Gladiolus Street, Franklin 7638.

OFFER: MR. WOODCOCK:

We offer this in evidence, Your Honor, because there has been testimony of conversations between Mr. Andres and Mr. Morrison; and further, will show a record of a call from this same Bay St. Louis group to this telephone.

THE COURT: All right.

MR. SLADE:

You are not offering: "Ford Plant, Montevideo" and other writings on here?

MR. WOODCOCK: Absolutely.

OBJECTION: MR. SLADE:

We object to that. There is no conversation as to that.

MR. WOODCOCK:

This is the official record of the Telephone Company, and I think it is evidence. That Ford Motor Co. is by whom employed.

THE COURT:

The only thing that is admissible is the part showing he had that numbered telephone on those dates.

MR. WOODCOCK:

I do not want to be under a misapprehension -

MR. SLADE:

Does Your Honor admit that?

THE COURT:

Subject to the instructions I have given the jury if he had the telephone at that residence on these dates.

OFFER: MR. WOODCOCK:

I offer that as G-57, which was marked for identification, the record of the services at Galvez 6959. The card is in the name of M. Wright. That is the telephone out of which all these conversations originated, and it has been shown that Morrison lived there, and that this numbered telephone was in his room.

THE COURT: All right.

MR. SLADE:

Your Honor limits that to the telephone.

THE COURT: Yes.

MR. WOODCOCK:

I am not content with Your Honor's ruling until Your Honor has heard me, because this card has information which I think is of value in the proof of this conspiracy.

May I show it to you?

OBJECTION: MR. SLADE:

It is a self-serving declaration made by a stranger.

MR. WOODCOCK:

It is a declaration made by Morrison.

MR. GEX:

Will you show that?

MR. WOODCOCK: It is his references.

MR. GEX:

Can you show he gave those references?

MR. WOODCOCK: That is what the card shows.

MR. GEX:

That would make it incompetent. You have got to identify it other than by the card.

THE COURT:

All right. It will go in with the written part down there showing how he made that application for service.

MR. SLADE:

Exception. There are a lot of notations on the back of that. We are not bound by them.

THE COURT:

I will rule which part goes in; the part showing he applied for the service, and the location and references given.

MR. SLADE: Exception.

MR. WOODCOCK: (Reading document to jury)

MR. SLADE:

I do not think there ought to be any explanation. I think it ought to be given to the jury,

THE COURT:

I thought those were identified yesterday. If so, there is no reason to ask witnesses further about them; just offer them.

MR. WOODCOCK: That is all.

MR. SLADE: Are you finished?

MR. WOODCOCK: Not permanently.

MR. HOLLINS:

I reserve the right to cross examine.

THE COURT: All right.

R. E. HERRICK: RECALLED:

BY MR. WOODCOCK:

Q Mr. Herrick, did you go with the marshal to serve an

arrest warrant on April 11 upon Nate Goldberg?

A I did.

Q And where did you go?

A To the Jackson Apartments, 1448 Jackson Ave.

Q Which apartment was it? A Apartment 1-A.

Q Did you find him living there?

A He came into the apartment later after I had arrived there.

Q And did he say anything to you about his occupancy of that apartment, or pick up any possessions in that apartment?

A He did not pick up any possessions that I recall. He talked about living in the apartment, or staying there.

Q Was there any doubt in your mind that he did live there?

A No, no doubt in my mind.

Q What name did he give? A Al Hart.

OBJECTION: MR. GEX: That is opinion.

THE COURT:

I will exclude that. If he said he lived there, that is admissible, but the witness cannot express an opinion as to who lived there.

BY MR. WOODCOCK:

Q How did he get into the place?

A Came in the front door with a key.

Q You were in there and he came in and unlocked the door?

A Yes. He came there with another man, and one of the two of them unlocked the front door. We were inside and he was outside. I cannot tell which of the two unlocked the door.

BY THE COURT:

Q Did he make any statement about the apartment, or any reference to it about living there?

A Yes sir.

BY MR. WOODCOCK:

Q What did he say about the apartment?

A I can't remember the words now. It has been two years ago and I cannot recall what remarks were made.

Q Who came in with him? A Isadore Blumenfeldt.

Q He is one of the defendants in this case?

A He is.

Q What name did Goldberg give you? A Al Hart.

Q Did you find anybody in that apartment named B. Miller?

A No, I did not. Blumenfeldt gave the name of Miller.

Q How was this man dressed when he came into this room - first, let us get at what time of day it was?

A Ten o'clock in the morning, around ten o'clock. They were dressed in working clothes.

Q Did they make any changes of their clothes?

A While at the apartment?

Q Yes. A No, I do not think so.

Q All you know is that the two came in the apartment together? A Yes.

Q And how long did they stay there?

A They stayed there between thirty minutes and an hour after they arrived.

Q Did you take them out in the same clothes in which they came in? A We did.

Q Was there anything said about changing clothes?

A I cannot recall whether they asked to change clothes or not.

CROSS EXAMINATION:

BY MR. GRACE:

Q Mr. Herrick, you were not deputy marshal at that time?

A I was not.

Q You are not a deputy marshal now? A No sir.

Q As a matter of fact you did not go there to assist in any arrest, to help the deputy marshal, did you?

A We had a warrant of arrest and a search warrant.

MR. WOODCOCK:

I do not want to go into the search warrant.

BY THE COURT:

Q Did you execute that search warrant at that place at the same time? A Yes sir.

Q You were there for the purpose of executing the search warrant? A I was.

Q Did you seize anything there at that time that the Court ordered returned? A Yes sir.

THE COURT:

I will exclude all that part of the testimony. Disregard his testimony as to what happened at the apartment, gentlemen.

J. E. COOPER: Witness, being duly sworn and examined on behalf of government, testified as follows:

DIRECT EXAMINATION:

BY MR. HOLLINS:

Q Please state your name? A J. E. Cooper.

Q Where were you living in the spring of 1931?

A At 1448 Jackson Ave., Jackson Apts.

Q Did you have control of that apartment?

A I did have at that time.

Q You knew who the occupants of apartment 1-A were?

A Yes sir.

Q Who were they? A Mr. Henry Bloom.

Q And who else? A That was the only one.

Q Well, did anyone stay in there with Henry Bloom.

A I suppose he had some people visiting him, but I do not know who they were.

Q Wasn't there someone living there with him all the time?

A No sir, not that I knew of.

Q Now I point you out this gentleman here at the end of

the table. Do you see him? (Indicating)

A Yes sir.

Q Did you ever see him before?

A The one you just mentioned, I saw.

Q This one here? (Indicating)

A Yes sir.

Q Where did you see him?

A At the Jackson Apartments.

Q Every day, or just infrequently?

A Infrequently.

Q Do you know whether he lived there or not?

A No, he didn't live there.

Q What name did you know him by?

A I never knew his name.

Q How many times would you see him there?

A Very seldom. I could never tell that.

Q Did you say what name you knew him by?

A I never knew his name.

MR. GEX:

We move the testimony be excluded.

THE COURT:

If you want it excluded, I will exclude it.

MR. GEX: Yes, Your Honor.

THE COURT:

I will not exclude the statement he had seen him there on occasions. That is all it amounts to.

MR. GEX: Subject to being connected.

C. W. PRATHER: RECALLED:

BY MR. WOODCOCK:

Q Mr. Prather, you testified as to the seizure of some liquor at the Allen Plantation yesterday, and you were to bring the samples of it here. Have you brought them?

A Yes sir.

Q Will you produce them, please?

A Yes sir. (Witness produces samples)

Q Will you look at these samples and state whether they are the samples of the seizure at the Allen farm?

OBJECTION: MR. WAGUESPACK:

It is understood my original objection applies to all of this whiskey under the ruling of the Indictment.

THE COURT:

You may have an exception.

A This is the whiskey received at the Allen Plantation. I can identify some of the marks, and my signature on same, which were marked and labelled and turned in to deputy marshal Henley at the time we returned to New Orleans.

Q Look at that; you call it whiskey. (Indicating) That is not whiskey? A No sir, Benedictine.

OFFER: MR. WOODCOCK:

I offer that in evidence as G-80.

OBJECTION: MR. SLADE:

The offer is subject to our previous objection.

OFFER: MR. WOODCOCK:

Quart of O'Gin marked G-81; short quart Scotch whiskey, marked G-82; quart of assorted whiskey, creme-de-menthe, and so forth, marked G-83; quart of Silver Slipper gin, marked G-84; quart of cherry whiskey marked G-85; quart of creme-de-menthe, marked G-86; quart of creme-de-cocoa, marked G-86; quart of champagne, marked G-87; quart of creme-de-menthe, marked G-88.

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CARL E. JENKINS: Witness, being duly sworn and examined on behalf of government, testified as follows;

DIRECT EXAMINATION:

BY MR. WOODCOCK:

Q Please state your name? A Carl E. Jenkins.

Q You are an officer of the Coast Guard?

A Yes sir.

Q Did you seize a boat called the Talvez in the course of your duties? A Yes sir.

Q What kind of boat was it?

A Well, lugger type boat.

Q When did you seize her?

A On the morning of April 7, 1931.

Q 1921 or 1931? A 1931.

Q And where was she?

A She was off Deer Point Light, La.

Q What was she loaded with?

A Loaded with assorted whiskies.

Q Did you have an invoice of what you actually found on her? A No sir.

Q How far from shore was she?

A She was about 200 yards from the Light, and about a half mile from the marshes, I guess.

Q Half a mile from what? A Deer Point marshes.

Q Where is that? A In Chandeleur Sound.

Q Does that open off from the Gulf of Mexico?

A Deer Point Light is within half a mile of the Louisiana marshes.

Q Where is that Light with reference to the mouth of the Mississippi River?

A That Light is to the eastward of the Mississippi.

Q The mouth of it?

A No sir. Northeast from the mouth of it.

Q How far from the mouth of the Mississippi River is it?

A Approximately 60 miles from the mouth of the Mississippi River.

Q And what was this sound she was in?

A Chandeleur Sound.

Q Does that open into the Gulf of Mexico? A Yes sir.

Q You seized her in Chandeleur Sound about 60 miles from

the mouth of the Mississippi River?

A Approximately. I have to refer to the record to get it exactly.

Q I haven't any objection to your referring to your record. Who was in charge of that boat?

A Felton Le Bouef.

Q Anyone else on her? A Not when I seized her.

Q What was she doing when you seized her?

A She was leading into Grand Pass, going into Grand Pass.

Q And where does Grand Pass lead?

A Into the Mississippi Sound.

Q Where does the Mississippi Sound lead?

A Into Lake Borgne and the Rigolets.

BY THE COURT:

Q How far is that from the shores of Louisiana?

A Approximately a half mile, Sir.

Q When you say 60 miles from the mouth of the Mississippi River, you do not mean out in the ocean 60 miles, do you?

A No sir.

BY MR. WOODCOCK:

Q What did Le Bouef say when he was arrested, and his boat was seized?

A Well, all the exact words I will have to refer to my statement. I do not remember all of it, but I know some of the conversation.

Q Well, what do you remember of it?

A Some of the conversation was during the trip to New Orleans after I seized the boat and arrested him. I had orders to tow him to New Orleans and turn him over to the Customs authorities, and during the trip up there I was just talking to him and asked him where he got his load, and first he said a boat on the other side of the Gulf, and later denied that, and I told him I could tell him within ten miles of where he picked it up, and pointed to position about 40 miles south of Mobile Bar, and told him that was where he picked it up, and he said I missed it within 100 miles; as far as I knew he could get it within ten miles -

OBJECTION: MR. SLADE:

I ask that be stricken, "as far as he knew".

THE COURT:

I think you better show those statements were voluntary.

BY MR. WOODCOCK:

Q Was that statement voluntary?

A Statement made to me and a couple of men on the boat.

BY THE COURT:

Q Had you threatened him in any way, promised him reward or immunity? A No sir.

BY MR. GEX:

Q You were an officer?

A Yes sir.

Q Did you caution him what he might say would be used against him?

MR. WOODCOCK:

I do not think that is necessary under the law.

THE COURT:

I do not think it is necessary for him to do that. On cross examination I will permit you to ask him if he did do that.

BY MR. WOODCOCK:

Q He did not tell you where he got the liquor?

A No sir.

Q He did have a load of liquor? A Yes sir.

Q Did you examine it? A Yes sir.

Q In what kind of containers was it?

A Some of it in sacks, 24 pints to the sack, and some 12 pints to the sack.

Q Were the sacks in any way similar to those? (Indicating)

A Yes sir.

Q How was the rest of the liquor?

A In sacks too, but larger sacks.

Q All the liquor was in sacks?

A All the liquor was in sacks, yes.

CROSS EXAMINATION:

BY MR. GEX:

Q You interrogated this captain as to where he got his

cargo at the time you are talking about?

A I didn't get that straight.

Q You were asking him where he got that cargo of liquor?

A Yes sir.

Q And you were seeking to get information from him as to where he got it? A Yes sir.

Q And you were at that time an officer?

A Yes sir.

Q Of the United States government? A Yes sir.

Q And you did not caution him that what information he might give you could be used against him?

A No sir.

OBJECTION: MR. GEX: I object.

THE COURT: Overruled.

MR. GEX: Exception.

MR. L. P. ADAMS: RECALLED:

BY MR. WOODCOCK:

Q Mr. Adams, can you state what government exhibit-40, offered for identification is? (Counsel hands witness document and witness examines same)

A This is what we call a long distance toll slip covering toll calls to certain points.

Q Do you know where they were made out?

A No, I don't know where these particular slips were made out.

Q And you had no custody of these? A No sir.

MR. WOODCOCK:

Now if it pleases the Court, the remainder of this case is a purely formal proof of these slips. They were admitted you will recall, Your Honor, for identification, on the testimony of Mr. Waldo Otis. They were the records of his hotel. I think the purpose of them, they do show intercommunications from Bay St. Louis, from the three gentlemen who were over there, to one or two of these defendants in New Orleans. I do not believe that I should delay closing the case to get the Bay St. Louis operator here, but it would seem to me under the circumstances, it being such a purely formal matter, if Your Honor wishes to proceed, give me until tomorrow to get her here, and in the meantime the defendants go on with their case.

MR. SLADE:

We expect the government to finish their case first.

MR. GEX:

That is not the way to try a case.

MR. WOODCOCK:

It is entirely with Your Honor, if they do not agree to it.

THE COURT:

I will reserve my ruling as to whether I will permit

you to couple it later on.

MR. WOODCOCK:

All the witness would know is if they were official records. That is all. I haven't any more questions, Mr. Adams. You may cross examine if you wish. I have one more witness, and with that reservation I am finished.

MR. GEX: No questions.

MR. HOLLINS:

Is this card admitted subject to some connection to be made hereafter?

THE COURT: What card is that?

MR. HOLLINS:

Ray S. Miller. He is a defendant in the case.

THE COURT:

Is there any evidence of anything more than he had a telephone at his residence?

MR. WOODCOCK:

That is all, but I think I will show the telephone on this list, if I can get this in evidence, moving from Bay St. Louis to Mr. Miller. The card cannot do anyone any harm to leave in, and to have a telephone.

THE COURT:

I will let it go in showing he had a telephone there.

BUFORD RHEA: Witness, being duly sworn and examined on

behalf of the government, testified as follows:

DIRECT EXAMINATION:

BY MR. WOODCOCK:

Q Please state your name? A Buford Rhea.

Q You are a Public Accountant?

A I am an Accountant.

Q Do you know the defendant, Joseph O'Neal?

A Yes, I do.

Q And do you know the defendant, Goldberg?

A Yes, I do.

Q How did you know him? A Goldberg?

Q Yes.

A I was introduced to him - let's see - that was about two years ago, as near as my memory serves me now.

Q Well, you were introduced to him. How did you speak to him, refer to him? A As Nate Goldberg.

Q And Mr. O'Neal introduced him to you?

A Yes sir.

Q Where did Mr. O'Neal take you to introduce you to Mr. Goldberg?

A To the best of my memory Mr. O'Neal either took me or told me to go to the Jackson Apartments.

Q You did some work for Mr. O'Neal, some accounting?

A No. My acquaintance with Mr. O'Neal was purely as a friend.

Q For whom did you do your work, your professional work?

A I prepared some figures for Mr. Goldberg.

Q And where did you do that work?

A At the Jackson Apartments.

Q Do you know what apartment it was?

A I don't remember the apartment number, no.

Q What floor was it on? A The ground floor.

Q And were you in this place frequently?

A No, I would not say frequently. I was there several times, though.

Q Over what period of time did your employment extend?

A Let's see. To the best of my memory I was there at intervals during, I would say, three or four months.

Q Do you remember the time when Mr. Goldberg was arrested?

A No, I had no knowledge of that.

Q Did your employment continue on indefinitely, or did it terminate? A It terminated.

Q You mean you never heard this man was arrested; I am trying to fix the time?

A Yes, I heard of course, of his arrest.

Q Did your employment continue after that time?

A No, it did not continue after that time.

Q Now do the three or four months extend back from the time of his arrest?

A Yes, it was three or four months, to the best of my

memory, prior to the arrest.

Q And were you paid for your services?

A Yes, I received a fee.

Q Do you remember what the compensation was?

OBJECTION: MR. GEX: We object to that.

THE COURT:

I do not think that is material.

MR. WOODCOCK:

Merely reflecting on the extent of the work.

MR. GEX:

The extent of the work would be the best proof.

BY THE COURT:

Q About how often were you up there during that three or four months?

A I should say altogether about four or five times.

Q You mean four or five times in all?

A In all. Maybe more than that, maybe five or six times.

Q About how long did you stay at a time?

A Couple of hours.

Q Mr. Goldberg usually about there? A Yes sir.

Q About the apartment you were working in?

A Yes sir.

Q Did you use the telephone in the apartment?

A Yes, I did.

Q What was the nature of the accounting work that you did for him?

A It consisted in compiling into statement form.

Q Statement of what?

A I have no knowledge of the nature of the - in fact, the statement did not reflect the business.

Q The nature of the business?

A The nature of the business.

Q You mean you made up statements of profit and loss, balance sheets, something of that sort?

OBJECTION: MR. SLADE:

I object. The statement is the best evidence.

BY THE COURT:

Q You have no copy of the statements? A No sir.

MR. WOODCOCK:

I am not asking for the contents of the statement. I don't think he knows.

Q From what data these statements of profit and loss were made, compiled?

A I saw various memoranda and scraps of paper.

Q See any books?

A No. I saw no regular set of books.

Q Did you see any memorandum books?

A Memoranda of various types, scraps of paper. It would hardly be called an audit book.

THE COURT:

It is admissible to reflect whether Mr. Goldberg was in

charge of that apartment.

MR. WOODCOCK:

It tends also to prove one of the allegations in the Indictment that books and records and accounts were kept and made up.

THE COURT:

The witness says he does not know what they were about.

I sustain the objection to that.

BY MR. WOODCOCK:

Q. Did Mr. Goldberg supply you with the data from which you made these statements?

MR. GEX:

I think Your Honor excluded those statements.

A. Yes, he did.

Q. Did you ever see Mr. Joe O'Neal in that apartment?

A. I can't remember whether Mr. Joe O'Neal brought me there, or simply told me to go by. It is over two years ago. I don't remember.

Q. You did not know Mr. Goldberg until Mr. O'Neal introduced you?

A. No sir, or told me to go by and see him.

OBJECTION: MR. SLADE:

I understand Your Honor excluded his testimony?

THE COURT:

Except the fact that Mr. Goldberg invited him to do the

work there at that apartment, and he was about there, and he had a telephone in the apartment.

MR. SLADE: All the rest is out?

MR. WOODCOCK:

Your Honor, subject to proving ~~whether~~ the long distance record from Bay St. Louis, that is our case.

OBJECTION: MR. GEX:

We object to that, unless somebody can identify it.

THE COURT:

All you can do is close your case at this time. The Court will not delay this case. After he gets here later on I will decide whether it can go in.

MR. WOODCOCK:

That is agreeable to me.

THE COURT:

Are there any motions on behalf of the defendants?

MR. SLADE:

There will be motions as to most of the defendants, but that will depend - we will have to have time to prepare our motions -

THE COURT:

If you have any motions you want to present, do so, and I will hear argument on them. I will not keep the jury here just to see how many motions you can prepare to-night and in the morning. I am not inclined to do that.

MR. SLADE:

I have at least 65 memoranda in relation to everything.

THE COURT:

I am already satisfied more than 60 of them the Court won't have to be bothered with.

MR. SLADE:

Your Honor's statement precludes us from going further.

I cannot present them in a lump.

MR. GRACE:

Are you willing to discharge the jury? We do not see why the jury should remain. I would like to take the matter up with you as to the motions outlined under all motions.

MR. WOODCOCK:

Before the jury is discharged I would like to make one final observation of this Goldberg Miller telephone number. I think it has been proven by the witness that he lived there.

THE COURT:

That will be admitted in evidence, the fact there was a telephone there.

MR. WOODCOCK:

And it was Goldberg's telephone?

MR. GRACE: No evidence of the proper number.

THE COURT:

Gentlemen of the jury, with the same instructions you

had before, you are excused until nine o'clock in the morning. (Jury retired)

The government can discharge such witnesses as they see proper, and the defendants may excuse their witnesses if they desire, until nine o'clock in the morning, unless you want to keep them for conference.

MR. WOODCOCK:

I am willing that the jury be instructed to find Frank Ritter, Jr., Frank Todaro, Silvestro Carrolla, and Pascal Tuminello, that the jury be instructed to find those men not guilty.

MR. GEX:

On behalf of Louis Cameron, N. T. Haas, and Buster Malini, we move the Court to direct a verdict in their favor.

MR. WOODCOCK:

I agree to that motion as to Buster Malini.

THE COURT:

That is what I had in mind. There being no disagreement we will get this out of the way first.

MR. WOODCOCK:

I will agree as to Haas. We agree to the motion as to Cameron. We ask the Court to instruct the jury to find Louis Cameron not guilty.

THE COURT:

I will dismiss as to Haas. If agreeable with Counsel, I would like to go down this list and call the defendants, and those that the Court does not care to hear any argument about, I will check those.

MR. GEX: That is agreeable.

THE COURT:

As to the defendant Morrison, I do not care to hear any argument with reference to that defendant. The next defendant is Blumenfeldt -

MR. WOODCOCK:

He is not here. He is up some place with appendicitis.

THE COURT: Jake Brownstein?

MR. WOODCOCK: He was not apprehended.

THE COURT:

Louis Cameron is out. Silvestro Carrolla.

MR. WOODCOCK:

That is one we suggested a directed verdict for.

THE COURT: Emilio Cue.

MR. WOODCOCK: He was absent.

THE COURT:

Several of these defendants are not here, but they are on this list, and I want to go down the list and check them. Henry Dandridge falls in a group of defendants that the Court feels somewhat this way about it; I am going to discuss this matter frankly with Counsel on

both sides; the jury is not present. Dandridge and all those other colored men were engaged as laborers over there, doing the work they were employed to do. Probably that would be sufficient to hold them as members of ^{very} conspiracy, but frankly the Court does not think/much of the charge against men of that kind in a conspiracy of this kind. If they were in conspiracy, it seems to me it was probably a conspiracy of their own. In any event, the Court is not inclined to regard their case very seriously if there should be a conviction. I am somewhat inclined to leave it to the representatives of the government if they want to burden the jury to keep up with all the testimony on defendants of that character in this case.

MR. WOODCOCK:

I feel, of course, there is a little conflict on the subject. I find these Indictments here, and these men indicted. I absolutely agree that their part in the conspiracy was small, and their punishment should be extremely light, but from the facts of the case and the general outline of the Indictment, I doubt the propriety of moving to dismiss them.

THE COURT:

Do you think it sufficient to hold one in a conspiracy, if there were a group - if your evidence establishes

anything - I am not passing on that - if your evidence establishes a conspiracy between Mr. Morrison, Mr. Goldberg, and others in New Orleans, and if it was in furtherance of that conspiracy one of them go to Mississippi and hire some laborers simply to assist in an Overt act and they have no knowledge of the conspiracy between the other parties, do you think that sufficient, even though they helped to form the Overt act, without any knowledge of the general conspiracy?

MR. WOODCOCK:

Weren't they essential in bringing in the liquor and putting it in circulation?

THE COURT:

Were they in the conspiracy, although they played an essential part?

MR. WOODCOCK:

There are plenty of authorities to show that the people in New Orleans need not know the people in Mississippi, that is, Morrison need not know Jim Dandridge, and yet at the same time play his part in the general conspiracy.

THE COURT:

I know it is well established that all men in the conspiracy are not necessarily people acquainted with one another, but at the same time, isn't it necessary for them to have knowledge of the purpose of the conspiracy?

MR. WOODCOCK: I think that is true.

THE COURT:

Laborers over there helping unload boats, some stranger comes along and employs them to help unload a boat, what do they know of Morrison and the others in New Orleans?

MR. WOODCOCK:

Take a man who is employed to unload a boat, and he knows he is unloading liquor coming from the sea -

THE COURT:

It is true he is violating the law, he commits a substantive offense.

MR. WOODCOCK:

His meeting of mind is direct with the man who employed him, who in turn is employed by the man higher up. In this case I had my own theory as to the truth about it. The movement as to Morrison, Goldberg, or the two O'Neals, had been through Necaise, who got the Malinis to run the boat, and the negroes to unload it. I think they are all part of the same general movement.

THE COURT:

My idea about that is Morrison, Goldberg, Necaise, and Malini, were in general understanding to do these things, and to accomplish it by using these farm laborers, manual labor, in accomplishing the Overt act. Is that

sufficient to hold these negroes under the circumstances, or any other person as far as that is concerned, under the general conspiracy?

MR. WOODCOCK:

Well, you asked my opinion, and I say that I think it is, Your Honor. I would not like to admit the proposition that it is necessary for these negroes to know Morrison or to know intimately what Morrison is doing.

THE COURT:

I grant you that is true, but wouldn't it be necessary for them to know there was some conspiracy back of their action to cause that liquor to be imported into this country?

MR. WOODCOCK:

I think that they did know that they were engaged by Necaise, for the sake of argument, for the sole purpose of unloading liquor. I think that is an essential part in the general undertaking, a link in the chain. We can use the comparison perhaps, that it is the links in the chain that holds the ship to her anchor -

THE COURT:

I concede your argument as a legal proposition is sound, but in this case I do not think much of the case against these negroes.

MR. WOODCOCK:

I found the Indictment as it is, and I am here to carry out and acquiesce in any ruling Your Honor makes, but I think the way to handle the situation is to let these defendants go before the jury, and Your Honor give them a very light sentence, if found guilty by the jury.

THE COURT:

I think we will probably get along better if I go through the entire list and hear from Col. Woodcock later as to these men.

As I recall, the testimony as to Henry Dandridge, Sam Dandridge and Jim Dantzler, is somewhat substantially the same.

MR. WOODCOCK: Yes, Your Honor.

THE COURT: Leon Fox.

MR. WOODCOCK:

He was nolle prossed, so he is out of it.

THE COURT: Booker Gaines.

MR. WOODCOCK:

I think he is in the class with the others.

THE COURT:

There were one or two witnesses who testified he was present and helped to unload.

MR. WOODCOCK: Yes sir.

THE COURT: John E. Garcia.

MR. WOODCOCK:

Now the evidence against him falls under two classes. I think the most substantial evidence against Garcia was that supplied by the witness Hyde today when he stated Garcia came with O'Neal, and that O'Neal hired him to unload the liquor. The other evidence against Garcia - frankly, it is not very conclusive - when referred to as Johnie over the telephone, his name, John Garcia, over the telephone. We find him employed, or with the man who comes down from New Orleans to hire the people at Indian Village to unload the boat.

THE COURT:

That coincides with my recollection of it, and at best I think that does not amount to more than a strong suspicion. There will be a directed verdict as to John E. Garcia. Talbot Green.

MR. WOODCOCK: He was absent.

THE COURT:

Haas is out. Alfred Jackson. The same line of evidence as to him, same as to the others. Abe Kaplan.

MR. WOODCOCK: He is not here.

THE COURT: John Knight.

MR. WOODCOCK:

He is one of the negroes mentioned several times.

MR. GEX:

From the Kiln. He is not here.

THE COURT:

Felton Le Bouef. That is the man who was in charge of the boat?

MR. WOODCOCK:

Yes sir, and he was concerned with the Nonpareil, brought in for repairs.

THE COURT: Jules LeBouef.

MR. WOODCOCK: He is absent.

THE COURT: Blaine Lee.

MR. GEX: He is one of the negroes.

THE COURT:

Buster Malini. He is out. Philip Malini.

MR. WOODCOCK:

He is the man who repaired the boat. He was on the boat at the time the liquor was unloaded.

MR. GEX: No, that was Tom.

MR. WOODCOCK: Philip was unloading there.

THE COURT:

He was with the negroes at the time the unloading occurred?

MR. GEX: Yes sir.

THE COURT:

I am not passing finally on those cases yet. Tom Malini, what evidence have you against him, except the work he did on the boat?

MR. GEX:

He was there at the unloading.

MR. WOODCOCK:

And the school teacher said he was out on the Allen plantation, and some of the other witnesses identified him.

THE COURT:

Charles Martin was one of the negro laborers, I believe, Ray Miller.

MR. WOODCOCK:

He was the man who told Morrison over the telephone that he had been out on the boat, and the conversation obviously referred to his broken arm.

THE COURT:

Leander H. Necaise. That is the man who was an officer -

MR. WOODCOCK:

Deputy officer. My theory undoubtedly the contact man in Mississippi.

THE COURT:

Joseph L. O'Neal, alias J. J. Jones, alias Smith.

MR. WOODCOCK:

There is an abundance of testimony in his case.

THE COURT:

Merchant D. O'Neal. That was the man usually called Buckley?

MR. WOODCOCK: Yes.

THE COURT:

Ilos Parker. He was one of the Kiln negroes, just simply one of the laborers.

MR. WOODCOCK:

The next man is not here, Samuel L. Rifas. I think we dismissed that. Frank Ritter, Jr. Morris Roisner was absent. That is the end of them, Your Honor. Parker is the last one.

THE COURT:

I think I might go through this list and call the names of the defendants that the Court is of the opinion that the case should go before the jury. I will not cut Counsel off from any argument they wish to make on it.

I will give you the ones I have in mind. Albert M. Morrison. Now as to Henry and Sam Dandridge, and Jim Dantzler, I am somewhat in doubt as to whether to submit those cases to the jury or not. Leon Fox is out. Gaines is out. Johnie Garcia goes out. Talbot Green not here. Haas out. Jackson, one of the laborers. Kaplan not here. Knight not here. Felton LeBouef will be in. Jules Le Bouef not here. Lee is one of the laborers. Buster Malini out. Philip Malini in. Tom Malini in. Charles Martin, one of the laborers. Ray Miller in. Leander H. Necaise in. Joseph O'Neal in. Merchant D. O'Neal in.

Parker, one of the negro laborers. The next one is dismissed.

MR. NORMAN:

I call Your Honor's attention to the fact that in going over the list I do not know whether you have Goldberg on your list or not.

THE COURT: Leave him in.

(ARGUMENT BY MR. HOLLINS*)

MR. GEX:

I would like to prepare my motions and hand them to the stenographer and let Your Honor pass on them with or without argument.

THE COURT:

I will let you gentlemen file any motions you desire in the morning. I want to get as much of this argument over tonight as possible.

MR. GEX:

I will be ready to present mine, and be glad to argue it.

THE COURT:

I will change my mind about the laborers and let it go to the jury, and if convicted, I will take care of that in the punishment.

MR. GEX:

Your Honor will let them go to the jury?

THE COURT:

Yes, that is my mind now. Albert M. Morrison; I will let him go to the jury. Henry Dandridge, Sam Dandridge, Jim Dantzler, Booker Gaines, Nathan Goldberg, Alfred Jackson, Felton LeBouef, Blaine Lee, Philip Malini, Tom Malini, Charles Martin, Ray Miller, Leander Necaise, Joseph O'Neal, Merchant O'Neal, Ilos Parker. That is all, I believe.

MR. NORMAN: Yes sir.

THE COURT:

That is 17, I think. Those are divided into two groups, one group that I know, unless you can convince me I am wrong about them, I am not absolutely sure whether I will let them go before the jury or not.

All requested charges must be passed up to the Court about the time the argument starts.

MR. WOODCOCK:

I have the privilege of opening and closing?

THE COURT:

The government will open and close.

Adjourned until 9:00 A. M., May 5, 1933.

MAY 5, 1933; 9:00 A. M.

(JURY RETIRED)

MR. WALLACE:

Now comes the defendants, Albert M. Morrison, Henry Dandridge, San Dandridge, Jim Dantzler, Booker Gaines, Nathan Goldberg, Alfred Jackson, Felton LeBouef, Blaine Lee, Philip Malini, Tom Malini, Charles Martin, Ray Miller, Leander H. Necaise, Joseph L. O'Neal, Merchant D. O'Neal, Ilos Parker, jointly, severally, and individually for themselves, through their attorneys, and at the close of the government's case, and before offering any evidence on their behalf, and move the Court to exclude from the consideration of the jury all of the evidence introduced on behalf of the government, and to instruct the jury to find such defendants not guilty, for the following reasons, to-wit:

First. The evidence is wholly insufficient to support the allegations contained in the Indictment.

Second. The said Indictment sets forth specifically and in detail in paragraphs Nos. 1 to 13 inclusive, as shown on pages 6 to 10 inclusive of the Indictment, the specific ways and means, designed, and intent by the said defendants to form, procure and carry out the conspiracy alleged in the Indictment, and the

evidence wholly fails to sustain the said allegations.

That is a motion as to all of them.

The defendants, Henry Dandridge, Sam Dandridge, Jim Dantzler, Booker Gaines, Alfred Jackson, Blaine Lee, Philip Malini, Tom Malini, Charles Martin, Leander Necaise and Ilos Parker, jointly and severally assign the further grounds for the motion, to-wit:

A.

The evidence fails to disclose that they, or either of them, had knowledge of the conspiracy alleged in the Indictment.

B.

The evidence fails to disclose that they, or either of them, participated in or aided in the furtherance of the conspiracy alleged in the Indictment.

C.

The evidence fails to disclose the commission of an offense against the laws of the United States by them, or either of them, within the jurisdiction of this Court.

MR. SLADE:

May the record show that all that was read into the record in relation to this motion for a directed verdict, not that it is being handed up to Your Honor in writing, but all that Mr. Wallace read into the

record applies to all defendants, all joined in it?

In other words, -

MR. GRACE:

Jointly, individually and severally.

MR. SLADE:

I adopt all the grounds Counsel just read into the record as a reason for requesting a directed verdict.

MR. GEX:

I present this my motion, in which I ask for a directed verdict as to the employees over there.

THE COURT:

I will overrule the motions.

MR. GRACE:

We reserve a bill of exception on the part of all defendants, and make the whole record a part of the bill.

MR. GEX:

I would like to read my motion into the record at this time, if the Court please.

THE COURT:

All right. If you want to read them in the record it is all right.

MR. GEX:

Now comes the defendants, Albert M. Morrison, Henry Dandridge, Sam Dandridge - all defendants who are still

in the case - jointly, severally, and individually for themselves, through their attorneys, and at the close of the government's case, and move the Court to require the government to elect which conspiracy alleged to have been committed it will proceed upon, and show that the Indictment charges conspiracies to commit three separate and distinct offenses:

1.

A conspiracy to import liquor into the United States in violation of the National Prohibition Law.

2.

A conspiracy to import liquor into the United States, and to dispose of same in violation of the National Prohibition Law.

3.

A conspiracy to violate the National Tariff Act of the United States.

4.

A conspiracy to violate the Radio Laws of the United States.

THE COURT: Refused.

MR. GEX: Exception.

MR. GEX:

Comes the defendant, Leander H. Necaise, and moves the Court to exclude the testimony offered on behalf of

the government against him, and to direct the jury to return a verdict in his favor, or a verdict of acquittal as to him, because the overt act alleged against said defendant was the placing of cinders by him on a road leading to a boat landing, the overt act being charged as follows:

"That on or about January 17, 1931, the said Leander H. Necaise caused a large quantity of cinders to be placed on the road leading to the boat landing near the home of M. T. Holden, near Kiln, Miss.," and there is no testimony showing that he ever placed any cinders on said road, or ever placed any cinders anywhere, or ever had anything to do with placing cinders on said road.

THE COURT:

I am inclined to exclude that overt act.

MR. WOODCOCK: All right.

MR. GEX:

Will the Court so instruct the jury?

THE COURT: Yes.

The proposition is just now being called to the Court's attention, but that is a proposition of indicating a man in one town is in conspiracy to violate two separate and distinct statutes that are in no way related, the radio statute, tariff statute and prohibition law.

(Argument)

THE COURT:

I overrule the motion.

MR. GEX: Exception.

MR. GEX:

Now comes the defendants, Leander Necaise, Tom Malini, Philip Malini, Sam Dandridge, Henry Dandridge, Jim Dantzler, Booker Gaines, Alfred Jackson, Blaine Lee, Charles Martin and Ilos Parker, and move the Court to exclude all the testimony offered in this cause, in reference to overt acts committed subsequent to the winter of 1930-1931, so far as said defendants are concerned.

THE COURT: Motion overruled. You may have an exception.

MR. GEX: Exception.

MR. GEX:

The record will show motion to elect was overruled.

THE COURT: Yes.

MR. GEX: Exception.

MR. GEX:

May I ask the Colonel if he is going to file demurrer to the plea of abatement? To complete the record he must have the demurrer in.

THE COURT:

That should be filed before the trial is concluded, and be dated as of last Monday.

MR. GRACE:

With permission to join all defendants in that plea of abatement. We would like the record to so show.

THE COURT:

I thought that was already in.

MR. GRACE:

Let the record show that exceptions were taken to all rulings of the Court in overruling our motions, on behalf of all the defendants.

THE COURT:

Yes. You may have exceptions on all rulings, on behalf of all defendants, separately, severally and individually.

MR. SLADE:

In our plea of abatement we offer the Indictment which Indictment was based upon the evidence that was suppressed. We want the record to show the following papers were offered on behalf of all defendants, and filed with the plea in abatement.

MR. GRACE:

I feel certain that was all offered in evidence. We offered the former Indictment, and the petition to suppress the evidence, and the order of the Court granting the prayer of the petition and the supplemental order entered in that proceeding.

OBJECTION: MR. WOODCOCK:

I object to all of that as irrelevant and immaterial.

MR. GRACE:

That was in support of our plea of abatement.

THE COURT:

I will let them offer it. I do not think it is necessary, but if they want it in evidence I will let it go in. Recall the jury. (Jury recalled)

THE COURT:

Gentlemen of the jury, in the physician's testimony yesterday regarding the fractured arm of the defendant Miller, I am not right clear in my own mind whether the physician testified as to anything the defendant ever said to him about that or not. If he did, you disregard it.

I only leave with you the testimony of the doctor that he did treat the man for a fractured arm. Any statement he made, if he did make any about what Miller said to him, you will exclude that and not consider it.

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TESTIMONY ON BEHALF OF DEFENDANTS:

MR. HOLLINS:

I do not know whether the record discloses this motion. I want to be certain it is in the record, as to general objection made to telephone conversations, which we reserved the right to make proper objection on the questions of identifications, and I want to be sure this particular objection is in the record.

That is all.

THE COURT:

All right.

MR. HOLLINS:

On behalf of Ray Miller, I move to strike out the testimony of the government witness Mullen as to any intercepted conversations which may refer to one Ray Miller, or purported to be, on the ground the voice has not been identified in any manner, and hasn't since been properly identified as the person referred to in this Indictment, or the party referred to or participated in such telephone conversation.

THE COURT: Overruled.

MR. HOLLINS: Reserve a bill.

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A. S. McQUEEN: Witness, being duly sworn and examined on behalf of defendants, testified as follows:

DIRECT EXAMINATION:

BY MR. GEX:

Q. Please state your name? A. A. S. McQueen.

THE COURT:

Gentlemen, I cannot undertake to recall all the testimony. If the witness testified to something someone else said to him about Ray Miller, or any conversation he had with him, with a man who gave the name of Ray Miller, or had the telephone identified as being in the residence of Ray Miller, I will not exclude that.

MR. HOLLINS:

There was no telephone identification as being in the residence of Ray Miller.

THE COURT:

Without going into details, I give the jury that assurance.

MR. HOLLINS:

Mr. Woodcock himself testified he hoped to show such was the case as to the long distance telephone conversations to Mississippi. He did not do so.

THE COURT:

If there is no evidence that Mr. Miller participated in any conversations, and gave that name over the

telephone, of course that is all excluded.

MR. WOODCOCK:

The testimony about this injury to Miller is in two telephone conversations, one of them with a man named Frank, who detailed the circumstances of Miller breaking his arm. That same day either Miller called Morrison or Morrison called Miller, and talked to him by the name of Miller, and Miller told him about the incident.

THE COURT:

Yes, I recall that; that is in. That is not excluded.

MR. HOLLINS: The first conversation is excluded, the one that Frank had?

THE COURT:

Oh yes. The conversation that Frank had, but the conversation Miller had himself, or the man giving the name of Miller, in which he talked to the defendant Morrison about this accident, is not excluded.

MR. HOLLINS:

I reserve a bill.

BY MR. GEX:

Q Mr. McQueen, do you hold any position with the government in Hancock County, Miss.?

A Yes sir.

Q What position? A County Superintendent of schools

Q As such do you have charge of the country schools?

A Yes sir.

Q And the teachers, of course? A Yes sir.

Q Do you know a man by the name of John Farmer?

A Yes sir.

Q I ask you to state whether or not you did not have him discharged for being drunk in school?

OBJECTION: MR. WOODCOCK:

I object. You cannot impeach a witness in that way.

You can ask this witness if he knows this man and knows his character, as I understand the rule.

THE COURT:

I sustain the objection.

BY MR. GEX:

Q Do you know his character? A Very good, yes.

Q Is it good or bad? A It is questionable.

THE COURT:

Answer the question if it is good or bad, if you know.

BY MR. GEX:

Q Would you call it good or call it bad?

A No sir, I would not call it good.

Q What makes you say that? Wasn't it the fact he got drunk in school while teaching, and he was fired?

OBJECTION: MR. WOODCOCK:

I object to that.

THE COURT: Sustain the objection.

THE COURT:

The witness cannot go into details as to why it is good or bad unless the commission of a crime involving moral turpitude. You can ask him if he heard people discuss his character. You asked him and he said it was bad.

MR. WOODCOCK: No questions.

T. E. KELLAR: Witness. being duly sworn and examined on behalf of defendants, testified as follows:

DIRECT EXAMINATION:

BY MR. GEX:

Q. Please state your name? A. T. E. Kellar.

Q. You are superintendent of Hancock County?

A. Yes, I am.

Q. How old are you, Mr. Kellar?

A. I am fifty years old.

Q. Have you held any other position with the government in Hancock County?

A. Yes, County Superintendent of Education.

Q. For how long? A. Eight years.

Q. Do you know Laverne Baker? A. I do.

Q. How long have you known him?

A. Since school kids.

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Q Do you know what reputation he bears as to truth and veracity? A Not good.

BY THE COURT:

Q First state whether you know it or not?

A I know it.

BY MR. GEX:

Q Is it good or bad? A Bad.

Q With that reputation would you believe him under oath?

A I would not.

MR. WOODCOCK: No questions.

LOUIS CAMERON: Witness, being duly sworn and examined on behalf of defendants, testified as follows:

DIRECT EXAMINATION:

BY MR. GEX:

Q Please state your name? A Louis Cameron.

MR. GEX:

I am in this position on your Honor's ruling. This man is one of the defendants whom you directed a verdict against. I just want to know before I interrogate him whether he will be discharged, no matter what his testimony shows.

THE COURT: Oh yes.

BY MR. GEX:

Q Where do you live? A Kiln.

Q How long have you lived there? A Since 1929.

Q Since 1929? A Oh, 1919.

Q That is when you came back from the war?

A Yes sir.

Q Do you know Laverne Baker up there? A Yes sir.

Q Do you know his reputation for truth and veracity in your community? A Yes sir.

Q Is it good or bad? A Bad.

Q Would you believe him under oath? A No sir.

Q Do you know a boy by the name of Mose Holden, or M. T. Holden? A Yes sir.

Q Was he born and raised up there? A Yes sir.

Q Right at the Kiln? A Yes sir.

Q Do you know his reputation for truth and veracity? A Yes sir.

Q Is it good or bad? A Bad.

Q Would you believe him under oath? A No sir.

Q You are a man of family? A Yes sir.

Q Do you know a negro named Leon Fox? A Yes sir.

Q I ask you whether he is all there, whether he is sane?

OBJECTION: MR. WOODCOCK:

I object; absolutely incompetent.

BY THE COURT:

Q How long have you known him?

A I know him about ten or twelve years, about that length of time.

Q Intimately or casually?

A Meet him occasionally, maybe once or twice a week pass him on the road?

Q Have conversations with him? A No sir.

BY MR. GEX:

Q Did you work at the same saw mill with him?

A Yes sir.

Q For how long did you work with him, every day?

A Oh, I worked there about eight years.

Q Was he working there? A Yes sir.

Q Did you see him every day while you and he were there? A Yes sir.

Q You could observe his demeanor and how he was acting?

A Yes sir.

Q Now I ask you if he is sane, or if he is all there?

THE COURT:

I sustain the objection to the question in that form.

BY THE COURT:

Q Would you say he was of sound or unsound mind?

A I would say unsound.

BY MR. GEX:

Q Do you know his reputation over there among the NEGROES HE ASSOCIATES WITH? A Bad.

Q On that reputation would you believe him under oath?

A No sir.

CROSS EXAMINATION:

BY MR. WOODCOCK:

Q What is your occupation? A Log man at the saw mill.

Q You work in the same saw mill that Leon Fox does?

A Yes sir.

Q You did the same kind of work he did?

A I worked in the logging pond and he worked in the
stacking shed.

Q He was competent to do that kind of work in the saw
mill where you were working?

A Well, lots of times there they would fire him, fire
him on account of getting other men hurt.

Q Did he do the same kind of work you did?

A No sir. He handled lumber and I handled logs.

CAPTAIN ALEX FAYE: Witness, being duly sworn and ex-
amined on behalf of defendants, testified as follows:

DIRECT EXAMINATION:

BY MR. GEX:

Q Please state your name? A Captain Alex Faye.

Q How old a man are you? A Sixty-two.

Q How long have you lived in the neighborhood of Kiln
now; all your life? A Yes sir,

Q You are a man of family? A Yes sir.

Q Most of your life has been steamboat captain?
A Yes sir, 39 years.

Q Captain, do you know Laverne Baker? A Yes sir.

Q Do you know his reputation for truth and veracity in the community in which he lives? A Yes sir.

Q Is it good or bad? A Bad always.

Q With that reputation would you believe him under oath? A Never.

Q Captain, do you know that teacher that was at Kiln school, teaching school over there, called John Farmer? A Yes sir.

Q Do you know the reputation he bears in the community in which he lives for truth and veracity? A Yes sir.

Q Was it good or bad? A Bad.

Q On that reputation, Captain, would you believe him under oath? A No sir.

MR. WOODCOCK: No questions.

ALEX HART: Witness, being duly sworn and examined on behalf of the defendants, testified as follows:

DIRECT EXAMINATION:

BY MR. GEX:

Q Please state your name? A Alex Hart.

Q Mr. Hart, you live at Kiln, Miss.? A Yes sir.

Q How old a man are you? A Fifty-four.

Q Man of family? A Yes sir.

Q Wife and how man children? A Six children.

Q Have you lived in that Kiln community all your life? A No sir. I been there about forty years.

Q Running a saw mill up there? A Yes sir.

Q Which you own? A Yes sir.

Q Did you know a boy named Laverne Baker who lived there? A Yes sir.

Q Do you know his reputation for truth and veracity in that community? A Yes sir.

Q Is his reputation for truth and veracity good or bad? A Well, I think it is bad.

Q On that reputation, Mr. Hart, would you believe him under oath? A I don't think so, no.

Q I will ask you if you were trustee of the school at the time that Mr. Farmer was discharged over there? A Yes sir.

Q Now I ask you this. These gentlemen may not know how a trustee runs a school in Mississippi -

OBJECTION: MR. WOODCOCK:

I object. This is an attempt to introduce testimony which is clearly incompetent.

THE COURT:

A man's character is always admissible, good or bad.

MR. GEX:

I asked him if he is trustee.

THE COURT:

I will let you ask him that.

BY MR. GEX:

Q You were trustee of the schools? A Yes sir.

Q I ask you if as trustee the teachers were not under your supervision? A Yes sir.

Q I ask you if you know the character now or the reputation of the witness John Farmer as to truth and veracity in the community in which he lives?

A Yes, I know it.

Q Is that good or bad?

A I think it is bad.

Q On that reputation would you believe him under oath?

A No sir, I don't believe I would.

CROSS EXAMINATION:

BY MR. WOODCOCK:

Q Whom did you ever hear discuss the reputation of Laverne Baker?

A Well, I don't know of any one.

Q You don't know of anyone? A No sir.

OBJECTION: MR. WOODCOCK:

I move that all his testimony with respect to the

gentleman's reputation of Laverne Baker be excluded, because he has never heard anyone discuss it. It is not a question of what he thinks of the man, but what he knows to be the general reputation, and he cannot possibly say that as to his general reputation unless he discussed it with someone. That is clearly the law.

BY THE COURT:

Q You have never heard this man's reputation discussed over there?

A I heard other people, but I haven't discussed it with anyone.

Q You mean you heard other people discuss his reputation?

A Yes sir.

MR. WOODCOCK:

May I ask him again?

Q Whom did you hear discussing the reputation of Laverne Baker?

A I can't call them right out now.

Q When I asked you that before you said you had not discussed it with anyone? A I have not.

Q Whom have you heard discuss it?

BY THE COURT:

Q If you heard people discuss his reputation, can you give the names of any of them?

A I would not like to give anyone's name.

Q It isn't a matter of what you would like to do; can't you give the name of any one?

A No sir, not and be sure.

MR. WOODCOCK:

I think the testimony is inadmissible.

THE COURT:

I will let it go to the jury for what it is worth.

BY MR. WOODCOCK:

Q Isn't what you have in mind, Baker was unloading liquor ships on the Jordan River?

A No sir, I don't know anything about that.

Q But you can't say a single person who ever said in your presence that his reputation was bad?

A I can't say.

Q You did know that he was one of those people who were helping to unload the Nonpareil? A No sir.

Q You never heard that? A No sir.

Q Never heard about liquor being landed there?

A Yes, I heard that.

REDIRECT EXAMINATION:

BY MR. GEX:

Q You testified from his general reputation in the community? A Yes sir.

LUTHER CAMERON: Witness, being duly sworn and examined on behalf of the defendants, testified as follows:

DIRECT EXAMINATION:

BY MR. GEX:

Q Please state your name? A Luther Cameron.

Q Mr. Cameron, where do you live? A Kiln, Miss.

Q How old a man are you? A Forty-five.

Q You lived in Kiln all that time except when you were out to war? A Yes sir.

Q Do you know Laverne Baker? A Yes sir.

Q Do you know his reputation in the community in which he lives for truth and veracity? A Yes sir.

Q Was that good or bad? A Bad.

Q On that testimony would you believe him under oath? A No sir.

Q You know a boy by the name of Mose Holden? A Yes sir.

MR. GEX:

May I ask him whether the boys have been in jail, Your Honor?

THE COURT:

No. That is not competent.

BY MR. GEX:

Q Do you know his reputation in the community in which he lives for truth and veracity? A Yes sir.

Q Is it good or bad? A Bad.

Q Under that reputation, would you believe him under oath? A No sir.

Q You are a man of family? A Yes sir.

Q How many children have you? A Eight.

CROSS EXAMINATION:

BY MR. WOODCOCK:

Q Who did you ever hear discuss the reputation of Mose Holden? A In the community.

Q Whom? A Mr. Charles Poret.

Q When did you hear him discuss it? A I can't tell just when it was, but I heard him.

Q When was it? A Maybe eight or nine months, or maybe a year ago.

Q You live on the Allen Plantation, don't you? A Yes sir.

Q That is where they unloaded the cargo of liquor in the fall of 1931? A I don't know.

Q You don't know of any liquor being unloaded there at your wharf?

OBJECTION: MR. GEX:

That is not in rebuttal of what we asked.

THE COURT: Overruled.

MR. GEX: Exception.

BY MR. WOODCOCK:

Q You say you do not know of the unloading of liquor at that place? A No sir.

Q Were you living in that house in the fall of 1931?

A Yes, in one house, the little house.

Q Are you telling this jury that you do not know at all of that seizure of liquor? A No sir.

Q Didn't you see the prohibition agents out there?

A I saw them in the daytime.

Q Then you did know there was some liquor out there?

A No sir.

Q You did not see the crowd of people coming up there, see them destroying the liquor? A No sir.

Q You surely do not mean that. You were living out there; you saw the agents there?

A I saw somebody. I don't know whether agents or not.

Q What were they doing?

A I don't know what they were doing myself.

Q And you had no curiosity to ask? A No sir.

Q When were they out there?

A I don't know just when they were out there.

Q You know what I am talking about, the incident I am talking about?

A I don't quite understand you.

Q You know there were some prohibition agents out

there on your place, don't you?

A They were somewhere out there. I don't know whether they were on my place or not.

Q Do you live near Pearl River?

OBJECTION: MR. GEX:

We object to that. I think that is going far afield -

THE COURT:

I think it is admissible.

BY THE COURT:

Q How far do you live from the place where the boats come up there on the plantation?

A I don't know.

Q About how far? A About 150 to 200 feet.

Q Were you living there in 1931? A Yes sir.

Q How long did you live there?

A Been living there ever since.

Q Do you know what house these gentlemen seized the quantity of liquor from? A Yes sir.

Q How far was that from your place?

A About 500 feet or more, in my estimation.

BY MR. WOODCOCK:

Q You do know the house then where they seized the liquor; you just answered that to the Judge?

MR. GEX:

Let him answer it to you or the jury.

MR. WOODCOCK:

The Judge asked the question: "Do you know where the agents seized the liquor?"

MR. GEX:

Well, what did you ask him again for?

BY MR. WOODCOCK:

Q You do know the agents seized some liquor in that house?

A I don't know whether it was liquor or not; I didn't see it.

E. E. LUMPKIN: Witness, being duly sworn and examined on behalf of defendants, testified as follows:

DIRECT EXAMINATION:

BY MR. GEX:

Q Please state your name? A E. E. Lumpkin.

Q You are now in charge of the Kiln Consolidated High School? A Yes sir.

Q How long have you been there? A Seven years.

Q Did you have under you a man by the name of John Farmer? A Yes sir.

Q Did you know Farmer's reputation in the community in which he lived for truth and veracity? A Yes sir.

Q Is that reputation good or bad?

A It is bad.

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Q From his reputation would you believe him under oath?

A No sir.

CROSS EXAMINATION:

BY MR. WOODCOCK:

Q He is no longer employed as a teacher, as I understand it? A No sir.

Q Was he employed under you as a teacher, or do you have his job now?

A No. He was employed under me as a teacher.

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LEONARD FREDERICK: Witness, being duly sworn and examined on behalf of defendants, testified as follows:

DIRECT EXAMINATION:

BY MR. GEX:

Q Please state your name? A Leonard Frederick.

Q Where do you live? A Kiln.

Q How long have you lived at Kiln? A Since 1905.

Q Have you a family? A Yes sir.

Q How many? A Seven.

Q Seven children. Your wife living? A Yes sir.

Q Up to recently I understand you had charge of one logging operation of the Edward Hines Lumber Co.?

A Yes sir.

Q That is a big saw mill at Kiln? A Yes sir.

Q I ask you if you knew a negro by the name of Leon

Fox?

A Yes sir.

Q How long have you known him? A All his life.

Q Do you know his reputation as to whether he would tell the truth or not in the community where he lives?

OBJECTION: MR. WOODCOCK:

That is not the question.

MR. GEX:

He is not quite as intelligent as the Colonel. I thought I would put it so he could understand it.

Q Do you know his reputation for truth and veracity in the community where he lived?

A I would not think much about his reputation.

Q Do you know his reputation?

THE COURT:

He says he doesn't think much about his reputation.

BY MR. GEX:

Q Do you know it at all? A It is a little dark.

THE COURT:

Do not answer that way unless you state you know his reputation.

A Otherwise it is bad.

BY MR. GEX:

Q What did you say?

A It is a little dark, I mean his reputation.

Q Upon that reputation would you believe him under oath?

A No sir, I would not.

CROSS EXAMINATION:

BY MR. WOODCOCK:

Q He worked in the mill with you? A Yes sir.

Q You know about his unloading liquor there at Holden's Landing? A No sir.

Q Never heard about that? A No sir, I didn't.

Q Whom did you ever hear say that his reputation was bad?

A Well, you can see for yourself it is bad. He worked with me, I ought to know.

Q Did you ever hear anybody say his reputation was bad?

A Common rumor around there.

Q They let him work in the mill with you?

A I kept him there a while in the mill.

(10 minutes recess)

MR. SLADE:

Counsel for the defendants, after a conference, have taken the responsibility to themselves to advise the defendants not to offer any further testimony, and we rest upon the case as it is.

THE COURT: All right.

MR. WOODCOCK: The government rests.

MR. SLADE:

At this time, the respective motions made by the

respective defendants join together and severally, which are now a matter of record after the government rested its case, are in every respect renewed for Your Honor's consideration.

THE COURT: Motions overruled.

MR. SLADE: Exception.

THE COURT:

Let the record show that the motions have been renewed and overruled on behalf of all defendants, separately, severally and individually.

MR. WOODCOCK:

Will Your Honor allow me to use the blackboard and put the names and figures on there byway of illustration?

MR. SLADE:

Is it not evidence?

MR. WOODCOCK:

That is my illustration. I want to show where the various things happened in relation to the others.

THE COURT:

I do not think that is admissible unless the witnesses testified to it.

MR. WOODCOCK:

I have always been permitted to draw a diagram and explain what it meant.

MR. SLADE: I object.

MR. WOODCOCK:

There are some things I can show more accurately and shorten the argument by drawing it.

THE COURT:

I do not think that is necessary.

MR. WOODCOCK: I am surprised.

MR. SLADE:

I do not think that is a fair statement to make before the jury, and places us in an embarrassing position.

THE COURT:

I will give you an exception to what Counsel said. I overrule the objection. I am aware of the fact there are various methods used throughout the country about matters of that kind, and I do not think there is anything improper in Counsel saying he is surprised at my ruling. The drawing would have to be pointed out by some witness familiar with the location -

MR. WOODCOCK:

Will Your Honor permit me to be sworn? I know that territory. I went over it and am competent to draw a map of it.

MR. SLADE:

We have already made our motion.

THE COURT:

A map to set out the locations where these transactions

occurred?

MR. WOODCOCK: (Drawing map)

Just a rough map of the Mississippi River, New Orleans, Bay St. Louis, Allen Plantation, Pearly River, Jordan River, the Gulf Coast along here, and have a line for the proper latitude and longitude.

MR. SLADE:

No distance, no feet.

THE COURT:

I will direct Counsel to erase all the drawings from the map on the board, but in the course of his argument, if he desires, I will permit him to have the board brought around here and place on the board illustrations of his argument.

MR. WOODCOCK:

That is all I wish to do, Your Honor.

THE COURT:

The drawings and illustrations will not be evidence, but used only as an illustration of Counsel's argument.

MR. SLADE:

We except and reserve a bill.

(ARGUMENT TO JURY)

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MAY 8, 1933: 2:00 P. M.

MR. WALLACE:

We file a motion for a new trial predicated upon several orders of the Court overruling the pleas in abatement and motions, and upon the refusal of a directed verdict, and errors in the admission of testimony.

Now as the Court can well observe, it has been impossible to get a statement from the stenographer or a transcript wherein and whereby the full substance of the evidence can be stated now in the motion for a new trial.

THE COURT:

The defendants have the benefit of all that, whether in the motion for a new trial or not.

MR. WALLACE:

If the Court requires it, we will read the motion.

THE COURT:

Unless there is something in the motion. Col. Woodcock, have you seen the motion? Have you looked over the motion for a new trial?

MR. WOODCOCK: No, Your Honor.

THE COURT:

Is there anything in it that requires the taking of testimony?

MR. WOODCOCK: No sir.

THE COURT:

Let it be filed and I will overrule the motion.

MR. SLADE: Exception.

MR. WALLACE:

Comes the defendants and moves the Court and each of them for 90 days time to prepare exhibits and file bills of exception, which I have included in the same order overruling the motion.

MR. SLADE:

I do not know how long it will take the stenographer to get the testimony out. We want to extend the time to complete our record and file assignment of errors.

MR. WOODCOCK:

I think that is awfully long to get up a record of a trial.

MR. NORMAN:

The rules of Court were amended as a result of a conference of all District Judges, which I presume Your Honor probably attended, and the rules provide now that whoever takes an appeal has 40 days in which to file his bills of exception in the Clerk's office.

THE COURT:

That is 40 days from the adjournment.

MR. NORMAN:

Then the Clerk is supposed to notify the other side of the fact those bills have been filed, and the other side has ten days to file opposition thereto. That is the practice around here, to present the bills in advance, and see if we can get together on it without bothering the Judge.

THE COURT:

When will this term of Court expire?

MR. NORMAN:

The third Monday in this month. The new term commences the third Monday in May. I mention that, because Mr. Wallace wants ninety days in which to file exceptions. Of course, the Court has the right to limit the forty days and extend it.

MR. SLADE:

I merely present these facts so Your Honor will give me the time, and save the time of correspondence. I am certainly not going to delay it. I ask Your Honor to give me a reasonable time for my assignment of errors.

THE COURT:

I believe I will make it ninety days. That is about as soon as it can get there anyway.

MR. WALLACE:

I have a petition now for appeal.

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MR. WALLACE:

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THE COURT:

That is the practice in our jurisdiction; without the transcript of the testimony usually file it nunc pro tunc, and after getting the transcript of the testimony then you can amend it.

MR. SLADE:

We can insert what we can recall. We could not get it all down.

MR. WALLACE:

I want to file our motion for appeal with that same assignment of errors set forth in motion for a new trial, adding thereto alleged perfunctory error of overruling the motion for a new trial. Then follows our order allowing appeal, and order stipulating the amount of bond.

Now I have a motion for the court to allow the defendants bail pending the appeal, and the order of the Court to fix the amount of the appeal bond.

MR. WALLACE: (Files citation)

MR. NORMAN:

Citations, Mr. Wallace, are issued by the Clerk. If Your Honor please, I understand that Dr. Wright is here from the Charity Hospital, and I presume Counsel will want to examine him on behalf of Mr. LeBoeuf.

THE COURT: Let him be sworn.

DR. D. O. WRIGHT: Witness, being duly sworn and examined on behalf of Felton LeBouef, testified as follows:

MR. WOODCOCK:

I assume Your Honor will ask the questions.

BY THE COURT:

Q You examined this man, Felton LeBouef? A Yes sir.

Q Just tell the Court the condition you found him to be in?

A Well, he has a syphilitic heart disease, which is a heart disease with a serious future, the life expectancy in a large group of cases being from two to three years; might be shorter, or might be longer.

Q What effect, if any, would imprisonment have on the defendant?

A It might prolong his life. What I mean is, if he stayed outside and did hard labor, and did not give himself mental and physical rest, it would shorten it, or it might prolong it. It could do either one.

Q So far as his physical condition is concerned, you think if the proper treatment in prison was indulged in, it would prolong it?

A No sir. The mental anxiety that would accompany it might shorten his life, but the treatment won't prolong his life very much.

THE COURT:

Any further questions?

MR. SLADE:

No, Your Honor.

Now I repeat my plea to make an exception in this case.

THE COURT:

I will think over this man's condition, and let him return here tomorrow at two o'clock.

MR. SLADE:

Yes, Your Honor.

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